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LAW AND ADMINISTRATION IN URBAN DEVELOPMENT
WITH SPECIAL REFERENCE TO
CAPITAL DEVELOPMENT AUTHORITIES IN NIGERIA AND TANZANIA

by

Hassan Lawal, LL.B. (Hons); LL.M; BL.

Being a thesis submitted in fulfilment of the
requirements for the award of the degree of
Doctor of Philosophy in Law

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ABBREVIATIONS

CDA	Capital Development Authority
CRDP	Comittee for the Resettlement of Displaced Persons
EARC	East Africa Royal Commission
FCDA	Federal Capital Development Authority
FCT	Federal Capital Territory
FMG	Federal Military Government
IPA	International Planning Associates
LUD	Land Use Decree
MCD	Ministry for Capital Development
SMC	Supreme Military Council
THB	Tanzania Housing Bank
UDCS	Urban Development Corporations
WHHDF	Workers and Farmers Housing Development Fund

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- D Capital Development Authority (Establishment)
Government Notice No.230 of 12.10.1973.

APPENDICES

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- B FCDA Contract Agreement Format.
- C Land Use Decree No.6 of 1978.
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Government Notice No.230 of 12.10.1973.

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DEDICATION

This work is dedicated to the three most
important people in my life

My mother Maryam, my father Muhammad Lawal
and my wife Bilkisu.

ABSTRACT

The principal aim of this thesis is to undertake a critical examination of the role of law and lawyers in urban planning and development. Its main focus is on two urban Development Corporations that are currently engaged in the planning and development of new capital cities in Nigeria and Tanzania. This research is intended to identify what impact these development corporations make in the mobilization and use of scarce resources, the provision of basic social services, overall urban administration and the role of lawyers and the legal profession in the process.

The first chapter provides a theoretical foundation to some of the more practical issues to be discussed in the chapters ahead. The current problems of urbanization and their socio-economic, political and legal effects on urban centres are discussed in chapter two. Land tenure and land acquisition for urban development are discussed in chapter three.

Chapters four, five and six represent the two case-studies undertaken in this thesis. Both case-studies start by highlighting facts and figures as regards the historical background of Lagos and Dar es Salaam as capital cities, why they were eventually rejected and the creation of new urban development corporations to plan, build and manage Abuja and Dodoma as the new capital cities of Nigeria and Tanzania respectively. These two case-studies give a critical analysis of the statutes creating these development corporations highlighting their strengths and weaknesses.

It is suggested in the conclusion that every scheme of urban development requires basic legal and administrative framework. This can only be possible by involving lawyers at the beginning and in the course of urban planning and development. Also, it is submitted that, in addition to sound legal and administrative framework, there should be less political interference with the management of urban development corporations if positive results are to be achieved. It is concluded that, given the right political atmosphere and provided that sound legal and administrative framework is provided urban development corporations can be agents of economic development and national integration.

GENERAL INTRODUCTION AND METHODOLOGY

Some of the prominent points of consideration in modern African states since political independence have been the resolute decisions to ensure political integration, 'Africanization' of upper and middle level personnel and the provision of welfare services. All these post independence priorities have been geared towards developing the productive capacity of the economy and achieving self sustaining growth in the shortest possible time. This overriding emphasis placed on economic development suggests that every social institution - including law - ought to be carefully examined to determine its probable effect on development. Unfortunately, due to one reason or the other, the idea of development has been perceived, especially in the developing countries, as being the exclusive domain of politicians, economists and administrators. Until recently lawyers have played very little or no role in the quest for rapid economic development in the Third World countries. Instead, the legal profession is seen as a traditionally conservative defender of established interests rather than innovator and advocate for change and improved social and economic conditions. The truth however is that if these emergent nations are to achieve a widespread distribution of the benefits of economic growth there must be an intensive effort to forge a system of law expressly designed to facilitate rapid economic development.

The main aim of this thesis therefore is essentially to undertake a critical examination of the role of law and lawyers in the development process. Similarly, this study will attempt to identify possible constraints in the relationship between law and

socio-economic development and propose measures which would seek to mitigate or possibly remove these constraints. In view of the fact that the term 'development' is broad, this study will seek to make an assessment of law and administration in urban development with specific case studies on Nigeria's Federal Capital Development Authority, Abuja and Tanzania's Capital Development Authority, Dodoma.

The study is structured as follows:-

Chapter One provides a theoretical foundation to the study by highlighting some of the theories that have evolved regarding the relationship between law and development. In this chapter we consider mainly three theories. The first one is that, it is possible for law to induce development. The second is that, in Africa this is impossible, because of the domination and self-interest of the elites. The third theory is that, the impossibility raised by the second theory results from the mechanism of international expansion of capitalism which gives rise to collusion between the elites and their international counterparts and in the end goes to perpetuate the dependence of the developing nations on the economy of the more advanced countries of the West.

Chapter two introduces some of the more practical problems facing both the advanced and the developing nations in the area of urban planning and development. Unemployment, underemployment and inadequate housing are some of the serious social, economic, and perhaps political problems facing many urban areas as a result of the process of urbanization all over the world. This chapter seeks to identify some of the remote and immediate causes of the current rapid population growth of towns and cities, especially the capital cities, and also to assess the economic, social and political consequences of

such urban growth. This chapter reveals that while advanced countries like the United Kingdom formulate and implement official policies that create new towns to decongest the capital cities and open new economic opportunities across the country, the trend in many African countries has been the creation of new capital cities. Countries that have had reason to decide on moving their capital cities in Africa in the recent past include Nigeria, Tanzania, Malawi and Botswana. Brazil and Pakistan are also among the countries of the Third World that have shifted their capital cities in the recent past.

There can be no doubt that a decision to create a new capital city presupposes a major project of urban development. This raises the issue of construction resource capacity as well as the question of the most viable agency capable of undertaking a development scheme of this magnitude. That is why chapter two attempts to examine the apparent gap in the existing institutional arrangements and skills available to carry out an ambitious programme of public investment in urban development of this magnitude. Both Local Authorities and Private Commercial enterprises are examined as possible agencies for the execution of such an urban development scheme. Both agencies are found to be inadequate for undertaking such a project. It is then proposed that to fill this gap an institution independent of the central government department and with corporate status be established for the purposes of undertaking the project of planning, building and managing new capital cities.

Even though there are many examples to draw on for such agencies, the New Town Development Corporations of the United Kingdom are analysed in this chapter to provide the immediate example of successful UDC's, known the world over. It is however, stressed that

the ultimate powers and functions of each corporation will be determined largely by the circumstances surrounding its creation and the needs to which it is expected to respond.

One cannot successfully draw a line of distinction between urban development and land tenure and its administration. In attempting to assess the prospects of any urban development programme one must also examine the prospects of land acquisition on the part of the developer. Such an examination would unavoidably involve questions of land tenure and its administration in the country concerned. Accordingly, chapter three critically examines the place of land tenure and land acquisition in the process of urban development. The traditional African land tenure system in particular is fully examined with a view to highlighting its main features, and the chapter then proceeds to consider to what extent these features serve as major constraints to urban development and how far they can adapt to an era of rapid urban growth and new modern economic activities.

Chapters four and five represent the first of our two case studies. The institution under review here is the Federal Capital Development authority, Abuja, Nigeria. Facts and figures relating to the exercise of moving the capital city of Nigeria from Lagos to Abuja are carefully analysed in chapter four. This chapter discusses the background history and the political and social pressures which Nigeria faced on the issue of retaining Lagos as the capital city of the country soon after independence. The circumstances leading to the final decision to shift the capital as well as the administrative and legal framework necessary before implementing such a decision are also discussed in this chapter.

Practical legal and administrative problems facing the Federal

Capital Development Authority in the light of its overall powers and functions and how they affect the socio-economic lives of the inhabitants of the new Federal Capital Territory are discussed in chapter five. This chapter is largely based on the practical legal and administrative issues within the new capital territory as experienced by the author during his four months fieldwork in Nigeria.

The sixth chapter of this work is also a separate case study of a similar urban development corporation in Tanzania. This time we are examining the Capital Development Authority, Dodoma, Tanzania shouldering the responsibility of developing and managing Tanzania's new capital city. This case study follows almost the same pattern as that on Nigeria. However, since there are, naturally, similarities and differences in the historical background, social, economic and political structures of both countries there can be no identical approach in the two case studies.

Most of the differences and similarities between the two countries in general and the two projects in particular are analysed in chapter seven. As the final chapter of this work, chapter seven also seeks to provide a brief summary of most of the major theoretical and practical issues highlighted from chapter one right through to chapter six. It also contains suggestions and recommendations on how to solve possible problems in future.

It must be pointed out here that even though this work is a comparative study it has more bias towards Nigeria. As the reader will soon notice, the author has had the opportunity of undertaking an extensive fieldwork in Nigeria for a period of four months. As a result of this he was able to meet and interview government officials, F.C.D.A officials and private individuals both within and outside the

new capital territory. Due to limited financial resources the same field work was not possible in the case of Capital Development Authority, Dodoma, Tanzania. However, our facts and figures on the case study on Dodoma are backed by an intensive review of available literature, as substantiated by notes and references. This was also supplemented by formal and informal discussions with lawyers, administrators and planning law experts with knowledge of and personal experience on the powers and functions of the C.D.A. Dodoma and its progress and constraints so far. On the methodology of research and presentation, a few words may be relevant.

METHODOLOGY

In broad terms the study of law in development can be approached in either of at least two ways. There is first the nomothetical or theoretical approach. The aim of this approach in most cases is to generate and test general principles, hypotheses and correlations between law and other socio-economic variables. On the other hand, there is the idiographic study of law and development. This simply refers to the 'case study' type of scholarly exercise. This particular approach enables the researcher to concentrate on one branch of the law and evaluate the way in which it is implemented, its efficacy and its effects on particular socio-economic institutions. The primary aim of this second approach is to generate deeper knowledge of, and insight into the problems that surround the particular institution being studied. In theory, the study of law in development can be by way of either of these approaches.

In practice many studies of law and development will fall in between these two broad approaches being either more on one side or

the other. As the title of this thesis indicates, the study of law and development that follows is a case-study of 'law and administration in urban development with special reference to Capital Development Authorities in Nigeria and Tanzania'. Two fundamental conclusions can easily be reached by the reader. Firstly, that the thesis has a case-study bias and secondly, that it is meant to identify the role of law in the development process. Even though these two conclusions are valid in broad terms, it is important to add that the study is more specifically concerned with the effect of law on particular socio-economic institutions (Urban Development Corporations).

As to our approach, we believe that the two approaches mentioned above are complementary ways of studying the relationship between law and development. Thus, in a case study approach a theoretical foundation is necessary to test general principles and hypotheses between law and development. This, in our view is particularly important in a comparative study. But the reader may ask: why a comparative study?

We think that a comparative study will be useful because an analysis of the similarities and differences presented by the two case studies will help us to understand not only the role of law in development but also to appreciate the constraints on legal rules to induce development much more than a single case study can hope to do.

We have chosen Nigeria and Tanzania partly because both countries were under British colonial rule, both countries decided to change their capital cities after Independence. By their colonial experiences and post independence economic and social goals the two countries are contemporaries. also in general the two countries

(together with the rest of the Third world) appear to be facing similar developmental problems. Apart from these similarities, the two countries also have some fundamental differences in ideological stance and economic policies. While Tanzania is committed to the principles of socialism Nigeria appears to have no specific ideological commitment. Also Tanzania has had more post independence political stability than Nigeria and hence more continuity of policies. On the other hand, Nigeria is endowed with more natural resources than Tanzania. Nigeria's oil, for instance, makes her relatively richer than many countries in black Africa and this, to a large extent, affects the nature and scope of her economic policies. This study may therefore provide an opportunity not only for comparison between two urban development corporations but also between two countries on the African continent.

We have therefore made two very important assumptions. The first is that law has a role to play in the process of development. The second broad assumption is that in both countries law and lawyers can contribute their own quota to efficient urban development and administration. These two assumptions raise the important question of the relationship between law and development. We may begin by examining some theoretical considerations on the role of law and lawyer in development in chapter one.

CHAPTER 1

THEORETICAL CONSIDERATIONS ON THE ROLE OF LAW AND LAWYERS

IN DEVELOPMENT:- AN INTRODUCTION

Many books have been written about the making of law: who makes law; what is the role of the judges; and similarly, there are books about who enforces the law and who breaks the law.¹ But there is a great gap, to which one may respectfully point, in most of these studies - and that is a thorough investigation and analysis of the usefulness and uselessness of law as a tool for development. Acts are passed to change the way we think and behave. These laws affect not only our thoughts and behaviour but also the social, economic and political conditions in which we live. The vital question we need to ask ourselves here is: 'do such laws succeed in achieving the desired effects?' If they do not then there must be something wrong with either the laws or their application or both. For instance, many countries of Africa, Asia and Latin America seek a way out of under-development by use of the legal weapon - can it work? In short, what is the role of law in the entire process of development?

We intend, in this introductory chapter, to touch mainly on those theories and concepts of law that have been developed with particular emphasis on theories and propositions that relate to the relationship between law and development. This chapter is broadly divided into four sections. We first of all consider some of the concepts and definitions that have evolved in respect of the two central terms in this chapter - i.e. "Law" and "Development". Secondly, Section (B) highlights the historical background to the emergence of Law and Development as a separate and special field of study. The third section of this chapter will then discuss the various theories and

propositions by different scholars on the role of law in development. Finally, Section (D) examines the current role of law and lawyers in the so called under-developed nations of the Third World.

By touching mainly on some of the general points, theories and concepts of law and development, this chapter is intended to provide the necessary background and foundation for some of the more specific issues to be discussed in the chapters that follow.

SECTION A

CONCEPTS AND DEFINITIONS:

(i) LAW

Right from Plato and Aristotle down to our modern jurists and scholars many have attempted answering the great and apparently unanswerable question - "What is Law". Even today this is one of the most popular questions on the lips of the academic and the layman. Perhaps the best starting point in our attempt to consider some of the theoretical issues that relate to the role of law and lawyers in development is to begin by seeking a plausible definition of the term "Law".

Many a battle has been waged over the essential meaning of law..... a good many writers disdain or neglect to give a comprehensive definition of law, the sense in which they use the term can be gathered only from the context.²

This was the opinion of Edwin Patterson. His views here point to the fact that there is not a single rigid definition of law that can be said to be applicable to all situations at all times. This same scholar in legal theory has written that "an incursion into jurisprudence is always an adventure in ideas in which the adventurer

must pick his way among incongruent terminologies"³. He went on to identify jurisprudence as deriving from the Latin word "jurisprudencia" meaning "knowledge of law" and signifying a practical knowledge of law and its application.⁴

Going by this definition, jurisprudence therefore, simply assumes an exploration of the various concepts and terminologies of law for the purpose of arriving at a specification. This may explain the apparent trend in the thinking and meditations of various legal theorists whereby their own meanings of law were related to and reflective of the environments they sought to elucidate. This being the case, we are left with no alternative other than to highlight these various theories and analyse them with the view to understanding their nature and how each and every legal theory is relevant to development, particularly in the Third World countries. We are therefore, in a way, embarking on 'an adventure in incongruent ideas and terminologies' in our efforts (we the lawyers) to identify our role and appropriately take our place in the development process of the world in generally and the Third World in particular. Anthony Blackshield has this to say of a lawyer seeking to identify his role and play such a role efficiently in solving human and ethical problems:-

When a lawyer seeks to understand the nature of the law in which he works and the fundamental notion it employs, he inevitably turns to philosophy for assistance; and this kind of philosophic influence, even when of no assistance to the law, may be of the greatest assistance to the lawyer in his struggle with human and ethical problems of a lawyer's life⁵

We may now examine some of the jurisprudential concepts of law as postulated by various theorists or schools of jurisprudence. In our

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We may now examine some of the jurisprudential concepts of law as postulated by various theorists or schools of jurisprudence. In our

discussion, we shall endeavour to examine these theories in terms of their tendency towards conceptualizing what the role of law in society should and ought to be.

Let us start by examining the functional school of jurisprudence. This school is also known as the historical or sociological school of jurisprudence. Although there are different trends of thoughts within the school, prominent among them is the historical conception of law with its emphasis on customary values as the material content of law. This school was started by Savigny⁶ whose contention was that in order to understand fully the nature and scope of law its origin must be properly examined. Thus, Savigny concludes that "... the sum, therefore, of this view is that, all law is originally formed in the manner in which customary law is said to have been formed; that it is first developed by custom and popular faith, next by jurisprudence, everywhere therefore, by internal silently operating powers, not by the arbitrary will of the law giver". In essence, the popular spirit (i.e. Volksgeist) gave to the law of a national society its peculiar national characteristics.⁷ Apart from the nationalistic premise upon which this definition was made it has three distinct features which are: (i) history (ii) custom and (iii) rejection of arbitrariness.

Considering Savigny's requirement of an historical antecedent as a necessary ingredient in determining the nature of law as it fuses itself with custom without the imposition of arbitrary will, we can clearly see that the law we had and still have in most of the developing countries had very little or no relationship to the history

and customs of the people expected to observe such laws. We share Savigny's views here because the present set of rules which are applicable in most of the independent countries of the third world are rules imported directly from the home countries of the former colonial masters. Not only were these rules incompatible with native customs but worst of all most of these rules were simply imposed on the recipient countries with little or no modification to suit local conditions. Compulsory imposition of new legal system is thus contrary to Savigny's concept of law. This is what we may term 'translocation of laws'⁸. Quite literally, this means that a law, whether a complete legal system or a specific part of it, is shifted bodily from its home territory to new ground. This was exactly the history of colonisation in the Asian and African continents.

An example here may be provided by the enactment in Nigeria by the colonial administration of the Interpretation Ordinance⁹, which was reenacted after Independence as the Interpretation Act¹⁰. No historical or customary values were taken into consideration by the colonial government before passing such laws. The Interpretation Act stipulated, inter alia, that "... rules of native law and custom which are contrary to public policy, equity and good conscience shall be deemed void..."¹¹

Another piece of legislation which demonstrates how the common law principles were made to dominate practically all aspects of legal development in Nigeria was the colonial Ordinance which declared "... any law or rule in force that is inconsistent with an enactment or an English statute of general application inoperative, null and void, and of no effect".¹²

All the examples cited above show how an instrument of arbitrary discretion could be used to invalidate historical and customary values

as principal sources of law. Thus we cannot see how Savigny's idea of law can be wholly applicable in most of the developing nations that continue to be governed by rules and regulations that are traceable to foreign origin.

It is important to add here that although legislation is not the only source of law, in most parts of the developing world all other sources are subordinated to statutory enactments. In this respect, Ocran has asserted, and we share his views, that, legislation is the most crucial source of law.¹³

Although Bentham is generally regarded as belonging to the positivist school of jurisprudence, his principle of legislation¹⁴ is relevant here. This tends to portray him as an institutionalist. On the principle of utility Bentham warned that "the public good ought to be the object of the legislator, general utility ought to be the foundation of his reasonings. To know the true good of the community is what constitutes the science of legislation, the art consists in finding the means to realize that good".¹⁵

In making this exposition Bentham must have assumed that all men are sufficiently rational as to be able to distinguish between what is of general benefit to the community (which should be used as a basis for reasoning) and what amounts to imposition of arbitrary will. When we apply this theory to the former African and Asian colonies it is clear that the colonial masters did not use Bentham's yardstick of "what is of general benefit to the community". This is not the same as saying that they did not know what was actually good for those colonies. For instance, when various common law principles were being transplanted into African soil the colonial rulers knew too well that Africa was culturally incompatible and socially and economically

irreconcilable with Britain. This is quite evident from the writings of some scholars on this issue. A.E.W. Park for instance, is of the opinion that:

The ideal, no doubt, is for a state to have its own 'home grown' legal system, but the organic development of any such system is a slow and gradual process, and when a society chooses or is forced by circumstances to undergo a radical change, it is most unlikely that its domestic law will be able to adapt itself rapidly enough to fit the altered situation. One solution to this problem is for the society to take over and apply for its own purposes the legal system of another country which has already developed to the stage to which it is itself hurrying.¹⁶

In making the statement above Park has, with due respect, overlooked a number of important issues concerning the imposition of laws on a society that has no bearing with Britain in terms of historical and customary values. The legal system of a country like England can be incompatible with the social context of Africa in a number of ways. The presuppositions and understanding of the law-makers are largely controlled by their own ideas and background. This makes the foreign legislator blind to the needs, role and wishes of the persons to whom the law applies. The most intriguing aspect of the whole situation is the fact that while such original common law principles and statutes have been undergoing radical changes in accordance with new economic social and political developments in England the transplanted laws in Africa remain static. Laws that were made in the Victorian era might now be out of date or out of fit with the contemporary English society. Though there is a much more impressive instance of rapidly changing social realities in the advanced countries the tempo of change in the developing countries is accelerating as the years pass by. The argument here is that if the developing countries were left

alone to adopt their indigenous legal systems they would have emphasised historical and customary values as major sources of law and would have developed a unique and indigenous legal system in accordance with Savigny's concept of law.

Another jurisprudential school we may examine is the school of legal positivism. John Austin, though not acknowledged as the founder of this school, made great contributions¹⁷ to this school which earned him a place as the leading advocate of the school. Austin conceptualized law as "a rule laid down for the guidance of an intelligent being having power over him". The two intelligent beings referred to here are: (a) the ordinary citizen of a country and (b) the Sovereign power. This exposition led him to the definition of law as "a command of the Sovereign".¹⁸

Although such an exposition raises many questions, Hart has, in modifying the positivist approach, defined a rule of law as existing only if it has been declared or recognized as valid by the accepted central organs in the community endowed with the power and authority to regulate human conduct.¹⁹

Considering the fact that this definition was made barely twenty three years ago (i.e. 1961) we can assume that Hart's notion of "central organs" has direct relationship to the structure of government in our contemporary nation states. Thus implying the legislature, the executive and the judiciary. This exposition necessarily raises the relationship of law to the state. In other words, is the term legal institution a separate entity from the superstructure of the state or are they both one and the same thing? If we endorse, as Bentley writes, the fact that, "law matches government every inch of its course, the two are not different but the

same thing"²⁰; and if, we accept the principle of interdependence between state and law, we may conclude that the state itself is a legal institution.

Turning back to Bentham, it is important to observe that a twentieth century exposition of his idea of law as based on functional utilitarianism rests on Roscoe Pound's programme for sociological jurisprudence.²¹ Pound envisaged law as a most effective method of social control, and designated it as a "social engineering" mechanism, a phrase which was seen by his students as reducing the problems of the legal order to satisfying individual wants and general social interests with a maximum of human enjoyment and a minimum of waste and friction.²²

The main characteristics of the functionalist approach, in our opinion, may be summarised as follows:- First of all, the fundamental obligations of any government should be the security of the state and the general welfare of the people. This can be done by ensuring that the laws of the land are couched in a way that the state is enjoined to provide basic facilities and adequate services and to control the national economy in such a manner that guarantees the maximum welfare of every citizen on the basis of social justice and equality of status and opportunity; to direct its policy towards ensuring the promotion of a planned, balanced economic development so that the material resources of the community are harnessed and distributed as best as possible to serve the common good.

While every part of the law of a society may be usefully regarded as a means of social control, we hold the opinion that the social control concept cannot be taken as exclusive. This is simply because it overemphasizes the conscious creation of legal rules for definite purposes.

Having highlighted some of the theoretical expositions made by learned scholars in search of an acceptable concept and a plausible definition of law, we may briefly attempt a definitional impression of the term 'Development' before ending this section of the chapter.

(ii) DEVELOPMENT

There is no doubt that the most important consideration on the part of all developing nations has been the resolute decision, since political independence was attained, "to develop the productive capacity of the economy and thus achieve self sustaining growth in the shortest possible time"²³ But the vital question which seems to remain very much unanswered is whether or not these countries really understand the concept of development. It is believed that the developing nations have focussed attention primarily on strategies for economic growth rather than development²⁴. There is therefore a basic misconception of what is development. Many people of the Third World see development in terms of modernization. The modernization theory itself sees the process of development as the business of the acquisition by the under-developed countries of the traits and characteristics of the developed countries.²⁵ It was observed by a particular developing nation that:

The main thrust of our development strategy during the next plan period must be in the direction of increased self-reliance and considerable reduction of our dependence on the external sector in general..... Our new emphasis is a product of experience. In our previous plans, we seem to have focussed attention primarily on strategies for economic growth, rather than development. It is time we raised the fundamental question: what kind of society are we evolving? What, indeed, is development?²⁶

This apparent misconception of the exact meaning of the term "development" in the Third World countries has led many to adopt economic growth and modern technology as the appropriate measure for development. In most of the third world countries mechanical produce like cars and motorcycles have become object of intense emotional desire. Chemicalized items like 'frozen chicken' or 'baked beans' are rapidly displacing traditional method of farming and rendering farms barren. Also machines of leisure such as 'stereo sets' and video tape recorders flood the markets in the developing nations. Items that were made for the convenience of others have now become symbols of modernization and development in these third world countries. The reader may recall here the question posed at the end of the quotation above: "What, indeed, is development?" A response to this question is found in the same document which states:

The answer to that question has often been couched in terms of material things, rather than people; in terms of creation, rather than evolution. True development must mean the development of man...²⁷

It seems that no specific definition has yet been adopted and agreed upon as far as the term 'development' is concerned. All we have is a situation where the modernization and the dependency theorists evolve conflicting propositions as regards the exact concept and meaning of development.²⁸ While the modernists see development as the degree of success by a society in attempting to create a western type model²⁹, on the other hand, the 'dependency' scholars view it as a relative term in view of the traditional communalistic character of most third world countries, especially those in Africa.³⁰

Another issue which has all along been a major problem to the emergence of a common concept and definition of the term 'development' is the fact that this term is capable of conveying different meanings to different people depending largely on their professional background. A sociologist³¹, for example, may refer to certain types of social factors and interactive values as indices of development; to an economist³² what constitute development may be some accumulative factors and production outputs, whereas a political scientist will readily refer to the efficiency of institutionalized forms of organization as a good sign of development. Similarly, complexity of enacted statutes and the ability to interpret them successfully may be, to a traditionally trained lawyer, a measure of development.

A compromise solution to all these different perceptions is, in our view, the understanding that development, be it social, economic, political, or indeed legal, must be associated with the idea of conceiving human beings as the main subject of the entire development process.

The Director-General for Development and International Economic cooperation of the United Nations once emphasised the need to regard human beings as the subject of the development process and not merely as it objects. In his own words:

..... development is increasingly seen as a process that should be geared to the human factor both as the agent and the beneficiary of development; should be endogenous, involving the autonomous definition by each society of its own values and goals; should rely primarily on the strength and resources of each country.....³³

In his own definition of the term 'development' Malcolm Adiseshiah was of the opinion that:

Development is, in the end, a form of humanism, for its finality is the service of man. It is moral and spiritual as well as material and practical. It is an expression of the wholeness of man serving his material needs of food, clothing and shelter, and embodying his moral demands for peace, compassion and charity. It reflects man moving forward and onward, yet ever in need of redemption for his errors and folly³⁴ (Emphasis ours)

Development as a phenomenon therefore must be associated with improvements in individual humanity and creative energy. Any development which is only associated with the acquisition of material and economic power or political influence or imitation of supposedly superior social norms is not applicable to the true concept of development in the Third World countries.

One important point worth mentioning here is the need on the part of the few privileged elites of the developing nations to conceive of development not as the ability to build economic empires at the expense of the teeming population of poor and needy citizens of those nations nor should they perceive it as the ability to wield political power by all means and hold on to that power regardless of the yearnings and aspirations of the people who brought them into power. These and other similar considerations should be subordinated to the ability to evaluate and control one's mental emotions and material desires. In other words, until the few educated people of the developing nations understand that their education is meant for the benefit of the many uneducated; until the average business man believes that collusion or connivance with the foreign interests is not the best way to be a successful business man; until the top bureaucrats and those in sensitive and powerful positions of authority use their discretionary powers, not for the purposes of protecting their class interests, consolidating their positions and perpetuating

their stay in office, but with a view to enhancing the socio-economic status of all and sundry, creating a just and egalitarian society in accordance with the rules of law; until then we, the people of the third world, shall think we are developing, despite evidence of distorted growth, while in actual fact we continue to remain in the swamps of under-development.

From the foregoing pages, the reader may notice that we have attempted to find a plausible definition of both the terms 'law' and 'Development'. We have also highlighted some of the theoretical expositions made by some great legal theorists in attempting to find an acceptable concept of law and its functions in the society. We intend to continue this discussion by examining these and other legal theories in the light of law and development. But before then, let us, in the next section briefly examine the historical background to the emergence of Law and Development as a separate and special field of study.

SECTION B

A BRIEF HISTORY OF LAW AND DEVELOPMENT

Before going into the complex area of various theories of law and development we may briefly examine some of the historical circumstances which contributed to the birth of the various intellectual movements in this area. This is a necessary background to a clearer understanding of our contemporary theories of law and development as well as fully identifying the role of law and lawyers in the development process.

Law and development is a special branch of the broader academic area of what is known as the study of law and society. Simply put, this branch, as a subject of study, relates specifically to theories and ideas which concern the analysis of the relationship between law

and development.³⁵ Such analysis mainly concerns contemporary issues and problems. Thus such issues are raised and analysed in the light of their relevance to existing problems. Law and development was relatively a late-comer as a special area of study in the academic circle. It was a product of 1960's³⁶ and the law and development movement has, since its inception, been linked to various American aid programmes and foundations. Prominent here was the United States Agency for International Development (hereinafter referred to as 'AID') which was established in 1961³⁷ as the main source of U.S. foreign aid³⁸. The aid programme of this agency was in many ways connected with the Department of State and also with various government agencies, academic institutions, business organisations and a number of major international agencies.³⁹

Apart from being the year that AID was created, 1961 was also the year that witnessed the enactment of special legislation under which foreign assistance could be extended to the developing countries from America - "The Foreign Assistance Act 1961" Title IX of the Act as originally passed stipulates:

Title IX - Utilization of Democratic Institutions in
Development.

In carrying out programs authorised in this chapter, emphasis shall be placed on assuring maximum participation in the task of economic development on the part of the people of the developing countries through the encouragement of democratic private and local institutions.⁴⁰

The congressional policy statement relating to the actual implementation of the Act states:

The congress declares that the freedom, security and prosperity of the United States are best sustained in a community of free, secure and prosperous nations....

The congress declares that it is not only expressive of our sense of freedom, justice and compassion but also important for our national security that the United States, through private as well as public efforts, assist the people of the less developed countries in their efforts to acquire the knowledge and resources essential for development and to build the economic political and social institutions which will meet their aspirations..⁴¹

It is important to observe here that though Title IX of the Act was amended in 1966, such amendment neither affected the substance of the title as originally passed nor the views of the congress on the need for U.S. foreign aid to the Third World countries.⁴² There is also one point that stands out clearly from the congressional policy statement quoted above. That is the fact that the development of the Third World countries through foreign aid was viewed from the interests of the United States which was expressed in terms of "our national security". This was also clearly expressed in a memorandum during the 1965 Congress hearings on assistance to the developing nations. In connection with the newly independent countries of the Third World the memorandum had this to say:

Total reliance on the former colonial power is often politically unacceptable in the newly independent state. Moreover, the U.S. position on, for example, issues before the U.N. may differ from that of the former metropole. In such cases a modest U.S. assistance program ... may demonstrate U.S. concern and interest and thereby increase receptivity to U.S. views on International issues....⁴³

A careful review of this memorandum shows that apart from the fact that the United States wants to put a stop to the continued primary reliance by the newly independent nations on their former colonial masters, it would also want to ensure that the aid receiving nations are lured into adopting similar views and taking similar

stance as the United States in political thoughts and major International issues.

We may now proceed to examine the exact involvement of AID in the emergence of Law and Development as a special field of study. A good number of academic institutions in the United States received direct financial support from AID for the purposes of encouraging research in Law and Development studies. The University of Wisconsin Land Tenure Centre⁴⁴, for instance, benefited from AID's financial support to institutions of higher learning with the aim of promoting law and development studies. Another major financial support from AID in this regard was the one million dollars (\$1,000,000) grant made to the Yale Law School for the purposes of enhancing research in Law and Modernization in the year 1969. So also was the seven hundred and fifty thousand dollars (\$750,000) grant made to Stanford Law School to assist in the study of Law and Development in Latin America.⁴⁵

AID was not the only source of financial support for the study of Law and Development. There were, for instance, other foundations which made available large sums of money for fellowships and other forms of scholarship for academic research into the area of Law and Development. Prominent among these foundations were the Ford Foundation and The Rockefeller Foundation. The International Centre for Law and Development (hereinafter referred to as ICLD) which was created in 1966 as a specialised agency for legal development assistance got the sum of three million dollars (\$3,000,000) as a grant to enhance its operation. The Ford Foundation, in its annual report for the year 1966, said of the ILC that:

Working with U.S. Foreign and International agencies, Foundations, Universities, and practising Lawyers and jurists, the Centre will stimulate and support systematic study of the role of law in International relations and the development of modern nations. The Centre will also be concerned with projects to help developing countries establish legal institutions essential to the functions of modern and free societies....⁴⁶

This Centre (ICLD) has funded various research works in law including Law and Development. It has in particular devoted a considerable proportion of its resources to the improvement of legal education and supporting legal research in the developing countries.⁴⁷

We may observe, at this juncture, the fact that the amount of interest created in the study of Law and Development in the 1960's in American Universities and other institutions of learning was largely, if not entirely, due to the generous financial assistance given by AID and these foundations. Interest in this area of study was not only limited to the academics but also extended to the American practising lawyers.⁴⁸ Although this interest among the practising lawyers in America was somewhat short-lived, some of the articles that were produced in the American Bar Association Journal and their tone⁴⁹ testify to the fact that issues regarding the role of law and lawyers in the development process were not strictly confined to the academic lawyers.

The early 1960's therefore marked the period of the emergence of intellectual movements for the study of Law and Development. The report of the Director of the International legal studies programme at the Harvard Law School goes to confirm this:

At this date, there is a general awareness of the world wide importance of the rapid and orderly economic development of the newly changing societies of Latin America, Asia and Africa..... On record there are good reasons to anticipate that the contribution of the legal profession can be of major importance...⁵⁰

Intellectual Paradigms

No historical outline of the events that led to the emergence of the Law and Development movement can be complete without highlighting the intellectual paradigms that were developed by the scholars for Law and Development. We shall therefore, before ending this section of the chapter, examine the paradigm developed by the Law and Development movement in America and how it was meant to be applied for the purposes of enhancing development in the Third World nations.

The scholars developed what was known as the liberal legalist paradigm. As far as Law and Development was concerned liberal legalism had two basic concepts. First of all there was their concept of the general relationship between law and the society at large. Secondly, there is the much narrower specific relationship between the legal system and development. In both the general and specific relationships emphasis was given to the central role of the state. The importance attached to the State was explained on the grounds that it (the State) had the power to use in order to regulate the behaviour of its subjects and at the same time it was itself limited by law. Thus the State could use law as a basic tool for regulating and changing the Society.⁵¹ This (liberal legalism) was 'the original' paradigm of Law and Development studies in the United States. It was also a clear reflection of the basic ideas about the relationship between law and society and between the United States and the Third World that prevailed in the United States universities in the late 1950's and 1960's.⁵² What we seek to explore now is the merits of

this paradigm as contained in a number of assumptions about the relationship between Law and Society together with the general notions linking law to development. The single most important question here is whether the liberal legalist model accurately reflected the role of law in the United States and whether the United States was a valid model for the Third World. In order to answer this all important question correctly we pose this paradigm as expounded by Trubek and Galanter and summarized in propositional form by Francis Snyder as follows:

(1) "Society is made up of individuals, intermediate groups in which individuals voluntarily organize themselves, and the State. The State is the primary locus of supra-individual control in society..."

(2) "The State exercises its control over the individual through law-bodies or rules that are addressed universally to all individuals similarly situated [and]... by which the State itself is constrained".

(3) Rules are consciously designed to achieve social purposes or effectuate basic social principles. These purposes are those of the Society as a whole, not of limited groups within it. Rules are made through a pluralist process... [in which no] single group ... dominates the process of formulation of legal rules, and no special characteristic of individuals or groups ... gives them systematic advantages or disadvantages in rule making".

(4) These rules "are enforced equally for all citizens, and in a fashion that achieves the purposes for which they are consciously designed".

(5) "The courts have the principal responsibility for defining the effect of legal rules and concepts.... and thus normally have the final say in defining the social meaning of the laws"

(6) The outcome of adjudication is determined by "an autonomous body of learning' not by policies relevant to legal rules or by other considerations.

(7) The behaviour of social actors tends to conform to the rules"⁵³

Comparing these specific propositions with the liberal legalist paradigm Snyder had this to say:

In contrast to these relatively specific propositions, the liberal legalist assumptions about the relationship between law and development were extremely vague. The meaning of development was specified only in general terms, devoid of any reference to social and economic forces. Law and development scholars, like modernization theorists, assumed that under-developed countries would follow a path roughly similar to that of developed capitalist countries⁵⁴

By the beginning of the year 1970, there had been a loss of faith in the practical application of the liberal legalist model as a valid tool for the development of the third world countries. As expressed by Trubek and Galanter, the liberal legalist "took for granted the existence of some natural tendency for legal systems in the third world to evolve in the direction of the ideal model of liberal legalism"⁵⁵.

The limitations inherent in this paradigm therefore came to light in the 1970s and fewer and fewer scholars became interested in its exportation to the Third World as a model for development.⁵⁶ This trend of events affected even the funding foundations who started

questioning their own programmes and the funding of ICLD. In 1975 an indication was given that the Ford Foundation was possibly going to stop funding the ICLD.⁵⁷ By the year 1977 AID's funding of law and development studies was considerably reduced.⁵⁸

It is important however to observe that notwithstanding this decline in the financial support enjoyed by scholars and researchers in the area of law and development, interest in the subject has been world wide. Not only in America but also in Europe and in some parts of the developing countries many scholars and students became interested in this area of study.⁵⁹ This is evident from the various theories that were evolved later on by eminent scholars to explain the relationship between law and development. Furthermore, one can argue that there have been deliberate attempts to put these theories into practice in some of the new universities in the Commonwealth, e.g. Warwick, Kent, Dar es Salaam, Papua New Guinea and the University of New South Wales in Australia. Efforts are also being made in this direction in India. The old approach treated law as an independent, self-contained established discipline. On the contrary, in these newer universities emphasis is placed on the study of socio-economic contexts, policy assumptions and actual effects of legal rules.⁶⁰ This goes to show that the study of law and development has stood the test of time. That is to say, despite some of the problems faced by the movement in the early 1970s and the decline in the funding of research in this area, law and development has survived as a separate and special field of study. We may now identify some of the theories that have been developed to explain the relationship between law and development.

SECTION C

THEORIES OF LAW AND DEVELOPMENT

The main feature of the intellectual movement of law and development is the total lack of consensus in basic concepts and hypotheses.⁶¹ This has remained as the major characteristic of the movement that has led to contrasting views and theories in the literature on law and development. It is however important to note that this particular feature of the movement had very positive consequences on the development of ideas and concepts in this area of study. For one, the lack of specificity in and consensus concerning various theories and concepts helped to generate contributions by eminent scholars from different backgrounds and with diverse interests and theoretical persuasions.⁶² Secondly, this relative lack of consensus necessarily meant absence of an explicit theory and that situation brought together some scholars who articulated some theories and assumptions that were apparently agreeable but whose actual notions of "Law" and of "development" were ultimately contradictory.⁶³ If, on the other hand, there had been some defined and explicit theories which enjoyed very wide consensus from the outset, the impact of the movement would not have been fully felt. Equally, the intellectual contributions made by scholars would have been limited. Thus, this relative lack of theoretical agreement was partly responsible for the attraction of a wide group of scholars to the study of law and development. This, for instance, is said to have helped the incorporation of modernization theorists directly into this intellectual movement.⁶⁴ Thus, despite this lack of consensus most law and development scholars shared certain presuppositions that suggested research questions, delimited the range of potential

answers, and embodied social and legal values. Let us now examine in greater detail the works and ideas of these scholars starting with the liberal legalists.

In analysing the liberal legalists' approach to the theory of law and development, we can easily see that their theory strongly emphasises the instrumental relationship between development goals, specific legal rules and instrumental legal thought and ensuring that all rules enacted are those that seek to achieve social goals.⁶⁵ Their theory is therefore an instrumentalist theory of law and development. Its main weakness however is the fact that, as a theory of law, it was very much centred on the ideology and interests of the West. This particular characteristic made it far-removed from its intended audience in the Third World. It was nothing more than a narrow expression of Western legal style. It has been observed that, for the most part, United States liberal legalist law and development was an attempt to export and impose United States ideas on the Third World.⁶⁶

The instrumentalist theory of law and development conceives of law as a tool which could be used to alter human behaviour and to induce and regulate economic development. This conception is, in many ways, an extension of the theory of law as 'Social Engineering'. This theory, on the other hand, can be taken to be similar to the need often felt by policy-makers and scholars to solve certain urgent and pressing social and economic problems in society. In the face of such problems, law is often seen as the first step towards mitigating them or even achieving a permanent solution.⁶⁷

The Instrumentalist Approach:

Though Robert B. Seidman is not a liberal legalist, his work clearly demonstrates the instrumentalist theory.⁶⁸ Seidman emphasises the role of the State and legal rules to foster development.⁶⁹ He holds the view that the State (government) is not merely formal and its actions are not merely epiphenomena but an integral part of the social structure.⁷⁰ In other words, since the need to channel change into desirable directions is considered by every government as one of its basic functions and since law is the tool being used to initiate and regulate change, he regards the State and the legal order as two sides of one and the same coin.

We may also examine Seidman's model of law and development which attempts to explain why people behave in the way they do when faced with a particular norm (legal rule)⁷¹. In a nutshell the model constructed by Seidman is as follows:

(a) How Law affects behaviour:-

Seidman sees the society as consisting of individuals and collectivities. These individuals and collectivities have, in their behaviour, what he terms 'arenas of choice' which consist of the social and physical resources and constraints of the society as perceived by these individuals and collectivities. The set of rules and policies that are promulgated by the State as well as the activities of the State employees make up the legal order. A 'law' is such a rule. The collectivity or the individual to whom the rule or policy is addressed is described as a 'role-occupant'. Such a role-occupant's ability to conform to the behaviour required by the rule or policy is dependent upon the existence of certain conditions. These conditions are that: (i) such a rule or policy clearly defines

and explains how the role-occupant's should behave (ii) that the role occupants learn of the rule or policy through a two-way communication channel (by which is meant a feedback system of information instead of a hierachical and authoritarian system), (iii) that the role occupants have the opportunity and the capacity to obey, (iv) that such obedience serves the interests of the role occupants, (v) that the role occupants in fact perceive the obedience as serving their own interests, and (vi) that the role occupants decide whether to obey in a public participatory problem solving process (as opposed to a hierarchical and paternalistic process). Thus Seidman believes that by changing the arenas of choice of the role occupants the State can consciously change their behaviour. Also he thinks that the simplest way to do this is to put the role-occupants in a participatory relationship with the law-makers.⁷²

(b) The State and the legal order:

There are various sets of individuals and collectivities in any given society with broadly similar economic interests. These collectivities or group of individuals are described as 'strata' by Seidman. Every legal order (already identified as rule or policy and every activity of State employee) affects these strata but differently. These various strata are therefore constantly engaged in a kind of competition to ensure the creation of legal order which works to their advantage. The legal order operates to the advantage of some strata and to the disadvantage of others through laws, policies and official government activities that delegate authority for decision making to some strata to the exclusion of others. These strata are conferred with some discretionary powers and they use such

powers to enhance their social and economic status to the disadvantage of other strata. In the course of exercising these discretionary powers they maximise their economic interest and consolidate their political influence. Through the day to day function of these state officials the interests of the strata with power are protected and their privileges sustained.⁷³

(c) The State Structure:-

The range of decisions taken by the State depends largely on the nature of the State structure itself. Decision making by the State structure consists basically of the processes of 'input, conversion and feedback'. These processes are clearly defined by the legal order and the decisions of the State structure necessarily concern the legal order. Since, as discussed above, the various strata in the society are engaged in constant competition to create or maintain a legal order that serves their particular interests, it follows that in making decisions concerning the legal order the nature of state structure determines which strata enjoy more privileges and influence. In other words, the state structure and the legal order do not act neutrally.⁷⁴

(d) The Conditions of Development:-

Seidman sees 'development' as meaning the process by which "the State acting through the legal order seeks to solve the problems of the poor, poverty and oppression."⁷⁵ The task of solving these problems requires, first of all, that the difficulties faced by the poor and the oppressed are identified and explained. Then the solutions must consist of a new legal order, not the application of

the existing one. Development in this sense also entails the need on the part of the political elite to have an ideology that instructs them to use the legal order to change institutions.⁷⁶

Seidman expressed the view that in many parts of Africa, just before Independence, the legal order was structured in such a way that the social institutions created and perpetuated the economic advantage of foreign firms, their managers and owners. The legal order, at the same time, created and perpetuated in those countries mass poverty, political power in the hands of a small elite, and dependence on colonial metropolises. Long after independence the situation has remained largely unchanged.⁷⁷

Seidman disagrees with liberal legalism. He holds the view that although great institutions of Western democracy, the rule of law, the separation of powers and fundamental freedoms worked in the West, they did not and could not function in the same way on the Continent of Africa. Attempts to export such ideas and utilize them in Africa did not achieve the desired goal. Instead of achieving development they brought stagnation.⁷⁸ His rejection of liberal legalism as ideal for the development of the Third World (Africa in particular) is expressed in his law of non-transferability of law and in his law of the reproduction of institutions.⁷⁹ The first law states that some rules of law in different places and different times cannot induce the same behaviour as they did in their time and place of origin. The second law is that, other things remaining equal, unless the legal order is changed, institutions will remain the same.

Seidman highlights the failure of liberal legalism to induce development by advancing the argument that the authoritarian structure of legal order limits its effectiveness in inducing any meaningful

change. What inevitably results from the contradiction that exists between an authoritarian legal order and the participatory imperatives of development is what Seidman calls "soft development". It is this contradiction that prevented the legal order in Africa from changing much behaviour.

We may now briefly summarise the major points and issues raised by Seidman in his model of law and development and also offer some few comments and observations. From our own understanding of the principal issues raised by Seidman, the crux of his model, simply put, boils down to the following main contentions:- In order to induce development in the Third World in general and Africa in particular, what is needed is not a hierarchical or authoritarian legal order but a participatory one. Both during and after the colonial era the legal order in much of Africa has been the former type. With that type of authoritarian legal order competition between various interest groups in Africa was inevitable. The group that benefited most from that type of legal order was the small elite - namely, the state officials, the powerful politicians and the foreign firms. In order to achieve a just and egalitarian African society with equal opportunity, equal rights and obligations to all citizens we need a new legal order (and a new state structure). The creation of this new legal order, according to Seidman, must be based on a clear understanding of why people behave in the way they do. There is however one major question which, to our mind, has not been answered by Seidman: On whose shoulder does this responsibility for creating new legal order lie? He, however, seems to imply that this should be the responsibility of the political elite (this is suggested in his contention that development requires that the political elite must have an ideology

that instructs them to use the legal order to change institutions). We think, with due respect, that Seidman has overlooked one important fact. Here, he ought to have addressed his mind to a simple question. That is, whether in reality a political elite (which benefits from existing legal order) can truly have an ideology for change. The simple truth is that such elites who are in position of authority always want to maintain the status quo. Such group of people do not welcome change in the first place let alone initiate one. The central bureaucracy, for instance, is a definite class with definite interest and as such always aspiring to protect those interests and to consolidate their powerful position.

Seidman's "law of non-transferability of law" is another issue we must comment on. We share his views that legal transplants, not only in Africa, but also in other parts of the world practically never worked.⁸⁰ The non-legal factors which he enumerated as directly or indirectly serving as constraints to legal transplants are also, to our mind, quite accurate. However, we would want to observe that apart from custom, history, geography and technology, language is another non-legal factor which serves as a major obstacle to effective communication and reception of the English common law in many parts of Africa. Apart from the basic fact that law can only be effective if communicated, the level of literacy in the society determines, to a large extent, how the law is appreciated and conformed with. Not only Africa, but even the modern technological society depends on a sufficiency of literate and numerate people to run it, or even to respond to its road signs. It is therefore clear that knowledge of, and responsiveness to, any rule of law depends very much on the ability of the subjects of the law to understand the language in which

the law is written. The failure of most of the legal rules in the Third World to induce development is therefore, due in part to the fact that they were written in a language which is foreign to the African soil and which is understood and spoken by a minority of the African population. Take the courts, for instance, where the use of interpreters in court and tribunal proceedings in the African countries has led to misrepresentation of facts, confusion and in some cases outright miscarriage of justice. It may be relevant to mention here that the author of this thesis had the personal experience of serving as a magistrate in Nigeria, and, with the benefit of hindsight, wonders how a customary court, for instance, can rightly claim to be customary, if apart from anything else, the English language is its mode of expression.

In Africa, Tanzania provides a good example of a Third World country where much has been achieved through the use of an indigenous African language (Swahili) in the dissemination of official government policies and information.⁸¹ Elsewhere in Africa, English remains the only official language and statutes, regulations and law reports appear in English. It is however, important to observe that the use of Swahili in Tanzania was largely due to the fact that nearly everyone in that country understands and speaks that language. This made it easier for Swahili to become the second official language. This arrangement would be impossible in a country like Nigeria with its diverse tribal groupings and several native languages.

Language barriers aside, one major factor which prevented law from inducing development, in our opinion, is the poor publicity given to all legislations, subsidiary regulations, government gazettes and other policy statements in the developing countries. The public

facilities for publicity are so inadequate that they hardly provide the desired communication channel between the centre and the periphery in those countries. In Africa, for instance, the majority of the population are found in the countryside but ironically mass media scarcely penetrate the African countryside. It was discovered in Buhaya, Tanzania, in the mid-1960's for example, that only 8.5 percent of the population owned a radio,⁸² and one-third had never even heard one.

The Opposite View

We may now examine the work of Bruno-Otto Bryde.⁸³ Quite unlike Seidman, Bryde holds the opinion that irrespective of whether a legal order is authoritarian or participatory, it is incapable of inducing development. In his work, he seeks to find out whether we can expect governments in Africa to enact laws that are designed to bring fundamental change in their societies.⁸⁴ This, he thinks, depends, to a large extent, on the power and motivation of governments. Also he holds the view that this power is conditioned by external constraints. The motivation will depend on the existence or absence of a conflict between development goals and the interests of those elites in power.⁸⁵ In African countries, as in many parts of the world, political and economic powers are held by a small group of people who constitute the elite. These people in authority resist change. Bryde believes that the law-makers who may intend to effect change in the legal order must expect opposition from the elites of which the law-makers are themselves a part. The law-makers here are invariably the members of the legislature, the judges, the academic lawyers, the bureaucrats and the politicians - these form the "cream" of the society.

Bryde conceives of development as economic growth, egalitarianism, democracy and autonomy.⁸⁶ His description of power structures in

Africa is that which consists of three main strata. First there is what he calls the stratum of the strategic elite at the top. This is the group with the highest and the most powerful political and economic power base. Secondly, there is the middle stratum whose social and economic boundaries with the upper stratum are rather fluid. Prominent among the members of this group are the top civil servants and chief executives of the public sector. Then at the bottom of the ladder there is the wage labourer and the peasant stratum with virtually no social status. They wield no economic or political power and yet they constitute the majority of the population. These are the poor⁸⁷ ordinary peasants most of whom are law abiding citizens. This power structure of African states serves as major impediment to development. It is inconceivable to use law in such a situation for the purposes of inducing development. This is simply because any legal rule that threatens the status quo or any policy that tends to change the position of the privileged elites will not be initiated. Bryde thinks that even if such rules are made they will only remain symbolic and their enforcement will be very difficult.⁸⁸

His sceptical stance was much more clearly expressed when he said:-

In African political systems, law-making power and influence on law-making are monopolised by a small elite... Development as an improvement of the African socio-economic conditions requires as a priority an improvement of the conditions of the masses; and we cannot expect a privileged elite to use law as an instrument in the interest of the under-privileged. In the final analysis the role of law in Africa appears to be very much dependent on the political and administrative structures that create and apply legal rules... Doubts about the future of law and development studies are justified.⁸⁹

We are now left with two contrasting theories of the role of law in development. One assumes that for a legal order to be capable of

inducing development it must be a public participatory one. The opposite view is that we cannot expect the African state to institute a legal order, whether participatory or otherwise, which can induce development. We may briefly test the validity of these two propositions. But even before then, let us examine what both Seidman and Bryde think of each other's propositions.

In reviewing Bryde's book, Seidman wrote that it was "a bundle of contradictions, at once brilliant and confused, important and trivial..."⁹⁰ He accused Bryde of misplacing the emphasis in the study of law and development. According to Seidman, Bryde ignored the legal sources of elite power and mass weakness. He equally failed to consider the consequences of various legal rules on economic class relationships and the law and institutions that linked political elite and the economic ruling class.⁹¹ In replying to these criticisms, Bryde was of the view that Seidman's belief in the use of law to induce development only made sense if one assumed that benevolence of the elite is the rule in Africa, and not the rare exception.⁹²

Our first point of observation here is the fact that both scholars have reached conclusions that are fundamentally different. Seidman concludes that the creation of a participatory legal order can induce development. On the contrary, Bryde concludes that, considering the nature of the power structure in African states, the elites who control both economic and political power will not be willing to pass any law or implement any policy capable of inducing development. Because of the amount of power they wield and the privileges they enjoy all laws and policies that constitute a threat to their vested interests will not be effective. It is important to note here that although, as indicated by Seidman, Bryde has not

identified the sources of elite power, the consequences of various laws on class relationships, and the nature of the link between political elites and the economic ruling class, both scholars agree that the power structure or legal order in Africa is authoritarian.

We endorse the views of Seidman that in attempting to understand the relationship between law and development the most appropriate starting point is to begin with the understanding of why people behave the way they do. Starting from this, we can easily get to understand why the political and economic ruling classes in Africa are linked and why they possess values and interests that deny the majority of the population development opportunities. We must however add that we acknowledge the fact that it is not in every case where this understanding is achieved that solutions leading to development are proposed or implemented. It is our hope that the strengths and weaknesses of both Seidman and Bryde's theories will surface in the course of our discussion of practical issues and specific case studies in the chapters that follow. Meanwhile, we may, before ending this section of the chapter, consider the broader role of law on the international socio-economic scene.

Law and Development and The Dependency Theory:

Another theory of law and development that blames the general poverty of the Third World on international development and mechanisms of capitalism is the under-development and dependency theory. We do not intend to discuss this theory in great detail here but we shall examine briefly how it affects the study of law and development.

The major thrust of this theory has been to relate the development of capitalism to the under-development of the Third World. A study of under-development principally concerns the mechanisms of capitalism, imperialism and neo-colonialism that are used to place the Third World in a perpetual position of dependency on European and North American economies. Under-development in the Third World is therefore regarded as a direct consequence of the roles of certain nations and groups of people in the world capitalist economy.⁹³ As far as the study of law and development is concerned, this theory suggests that the conceptual framework of liberal legalism reflects the hegemony of Western capitalism. For this reason, it must be rejected since it, among other things, enhances under-development and perpetuates dependency: Any study of law and development which is not brought within the framework of political economy will not achieve the optimum result. In other words, we must always recognise the fact that legal forms and ideas are, to a large extent, secondary and shaped by world wide socio-economic forces.⁹⁴

The theory sees the failure of law to induce development in the Third World nations as a direct result of the mechanisms of capitalism which make these developing countries dependent on the Western economies and hence their inability to enact and implement effective development policies. Thus, apart from the strong proposition made by Bryde concerning the unwillingness of the African elites to institute legal orders that are capable of inducing development, the dependency theory has added yet another proposition which suggests that, due to the mechanisms of capitalism the Third World countries are incapacitated in their efforts to initiate any meaningful development policy. This incapacitation on the part of the developing countries

comes as a result of the values and interests of both the elites within the various countries of the Third World and those of the international community. This is simply because the elites in any particular country constitute a class not only within that country but also on the international scene. This incapacity therefore goes beyond the boundaries of the various countries and extends to the international capitalist level. so, what Bryde has accused the African elites of is, according to the dependency theory, not only limited to rules and policies governing domestic national issues but also extends to the international level. Seidman also seems to accept the issue of dependence of the developing nations on the Western economies when he says:-

Because foreign firms dominated the economic order, and because the public positions and private prosperity of the political elites depended upon the continued existence and success of those firms, the political elites of Africa... in time became dependent allies of the foreign firms.⁹⁵

Another point of observation is the fact that the optimism shown by Seidman in the use of a participatory legal order is in contrast with the ultimate stance taken by the dependency theory. This is despite the fact that his explanation for 'soft development' was given in a brief hypothesis that: "soft development results inevitably from the contradiction between an authoritarian legal order and the participatory imperatives of development". He went on to say that "In Africa that contradiction prevented the legal order from changing much behaviour; discretion reigned supreme; corruption gnawed away; and the political elite, once revolutionary, tamely supported social, economic and political systems so much like the preceding era that they deserved the name neo-colonialists"⁹⁶.

Snyder is of the view that what research on law and development in under-developed countries requires is a radical reorientation and also such a research must be an elaboration of the Marxist theory of law.⁹⁷ The dependency theory is apparently based, to a large extent, on Marxist social theory. This is evident from its severe attack on capitalism. Marxist theory essentially refers to the body of social thoughts based on the writings of Karl Marx and Fredrich Engels. Although several voluminous writings of Marx and Engels contain many lengthy passages about law⁹⁸ these writings did not give any separate treatment of law, neither do they give any emphasis or centrality to law in the analysis of the social bond.⁹⁹

Marx and Engels gave some elaborate explanation on the stages of the evolution of human society. Marx started by drawing a distinction between the base and the super-structure of social relations in 1859. The base here was conceived by Marx as consisting of the relations between the members of society and the means of production. According to Marx, all forms of social intercourse in the society are largely determined by this economic base. The superstructure, which consists of, inter alia, religion, philosophy and law rests upon this base. The argument that Marx is making here is that since law is part of the superstructure it cannot have a separate autonomy or independent history. This may explain the failure of Marx and Engels to treat law in their writings separately. It may equally provide an explanation as to why law is not given any centrality in the analysis of social bond.¹⁰⁰ This fact notwithstanding, there is what is generally regarded as a Marxist theory of law.

We may now consider the Marxist critique of law in a capitalist society.

According to Marxist theory of law, it amounts to an error in reasoning to suppose that the content of the law simply depends on the arbitrary choice of the legislature. We must not forget the fact that what the legislature does is controlled by the relations of production which, as explained above, forms the base of the society. In the first stage of the evolution of society (the primitive clan society) the production of the means of life was on a communal basis and more emphasis was placed on the acquisition of necessities, basic raw materials, and instruments. It was from this type of society that we moved towards class society, with a ruling class (the bourgeoisie) and the oppressed (the proletariat). In these stages of evolution, society gradually evolved to our present day society. The law, particularly in the capitalist society, expresses the will of the ruling class. This will is always dependent upon the interests of the ruling class which are dictated by their involvement in the means of production. Marx believes that the relations of production constitutes "the real foundation on which rise the legal and political super-structure".¹⁰¹ Marx and Engels conceived of the state as:

The form in which the individuals of a ruling class assert their common interests, and in which the whole civil society of an epoch is epitomised. It follows that all common institutions are set up with the help of the state and are given a political form. Hence the illusion that law is based on will, and indeed on the will divorced from its real basis on free will. Similarly justice is in its turn reduced to statute law.¹⁰²

In a capitalist society, it is the ruling class that exploits the proletariat. Taking a contract of labour as an example, the Marxist theory argues that the labour power which accrues to the employer as a result of what the labourer produces is far greater than the amount of

money which the labourer gets in return. While the labourer, through his physical fitness and sheer hard work, produces goods he is in return given the barest minimum amount that can only afford him basic necessities for human existence. Thus the surplus value of labour is unduly expropriated by the capitalists. The role of law here is to maintain the status quo by protecting the interests of the ruling class. In this way, the law and the state are nothing more than the means through which the ruling class asserts and perpetuates its interests at the expense of the poor proletariat who ironically form the greatest majority of the population.

It may be worthwhile here to highlight one similarity which exists between what Seidman identifies as the authoritarian legal order and what the Marxist theory identifies as "the law". It is this particular authoritarian legal order that the Marxist theory defines as the law. This, to our mind, is the only way in which Seidman's explanation for 'soft development' resonates with Marxism. Also the identification of law as a mechanism in the perpetuation of capitalism by the dependency theory tallies with the marxist conception of law. Furthermore, despite the fact that Seidman and Bryde disagree on some points both scholars share the view expressed by the dependency theory that the Third World has continued to have legal orders which benefit not only the national elites but also the international bourgeoisie. There is thus a common agreement between these scholars that this state of affairs has resulted in the perpetuation of mass poverty in the third World and dependency on the Western economies.

The foregoing propositions represent the three major theories that have emerged over the years in the studies of law and development. Although, in some issues, some of these theories

disagree strongly with one another, we believe that there is some amount of truth in each of these theories. We may move our discussion to the next and last section of this chapter which examines the role of law and lawyers in the Third World countries in their current efforts to achieve a balanced development.

SECTION D

LAW AND LAWYERS IN THE THIRD WORLD

Having traced the historical background to the development of 'law and development' into a special and definite area of study and the subsequent concepts and theories that were evolved by eminent scholars, we may conclude this chapter by briefly examining how in actual fact law and lawyers can, in the world in general and in the developing nations in particular, contribute their own quota to the current quest for development. If development is seen as a self-conscious effort to transform society, the role of law and its effect in the development process of the Third World countries cannot be overemphasised. As was rightly stated by Lawrence Friedman:

..... Legal systems are clearly a part of political, social and economic development, just as are educational systems and other areas of the culture. No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws.¹⁰³

Unfortunately, until quite recently, law and lawyers in the Third World were not regarded as a force to be reckoned with in the areas of formulation and actual implementation of the development process. The role of law in society was seen as only that of ensuring the maintenance of peace and order, criminal and civil litigations and handling of other related legal issues. Attention was focussed on

development economists, social scientists and other specialists who operate within the area of development studies. As events began to unfold themselves however both the policy makers and the general public began to appreciate the necessity of a legal framework to a programme of development which is meant to improve the living conditions of the people. People then began to realise that the role of lawyers is much more than the conventional role of going to court to defend clients or executing deeds of conveyance for the wealthy land owners. So many lawyers started making positive contributions in all the political and socio-economic spheres of life in Africa. In a statement highlighting the role of law and lawyers in the society Akinkugbe observed:-

The lawyers and the law can be instrumental in bringing about happier and better societies if both can be enlisted in non traditional though vital public service. This is part of the larger responsibility of our profession..... Because of their unique positions in society not only must they show interest, they must take the lead in influencing change and awakening the less informed members about the need for change and social improvement. They cannot be content with the conduct of their practice and administration of justice, they cannot remain strangers to important development in economic and social affairs if they are to fulfill their vocation as lawyers; they should take an active part in the process of change.¹⁰⁴

The question that readily comes to mind here is: what exactly could one point to as the main factor responsible for this relatively poor role of the lawyers and the legal profession in the process of development. In a report prepared by a committee of distinguished international scholars and published by the ILC, New York, the committee was of the opinion that researchers in development studies did not pay adequate attention to law and legal institutions as a tool for planned social change. This, the committee noted, contributed to

the apparent lack of proper participation by law and lawyers in the development process. In the exact words of the committee:-

.... Decision-makers designing and implementing development plans, programs and projects, rely on development studies for guidance. Accordingly in LDCS and MDCS universities, research institutes, governments and international agencies have devoted substantial resources to development studies. Economic, social and political development have all been extensively investigated. The committee found, however, that despite the scope of this research relatively, little attention has been paid to "Law" in the normative, instrumental and substantive sense of the word.

As a result, the current body of development knowledge and doctrine is relatively insensitive to law and legal institutions. This gap, the committee, felt, was a costly one. In ignoring law, development studies have overlooked a major dimension of the very process they are charged with examining. In failing systematically to examine the possibilities and limits of law as a tool of planned social change, development researchers have shown a surprising lack of interest in the nature of one of the tools that policy makers daily employ to reach development goals....¹⁰⁵

The almost total lack of attention on law as a tool for effective development by researchers, as indicated by this committee, explains the reason why lawyers could not make any impact on development process.

Another reason responsible for this state of affairs, in our opinion, is the attitude of the lawyers themselves. Lawyers in the Third World countries take very little or no interest at all in areas outside their traditional law subjects.^{105A} They often see their role only in terms of protecting individual rights and interests. This particular attitude of showing no interest in other professions is not only restricted to lawyers in the Third World countries. For instance, when explaining the attitude of the average English legal practitioner to the subject of planning in the United Kingdom, Professor Patrick McAuslan¹⁰⁶ made a number of observations. He observed that

there are three important factors that shape the attitudes of the lawyer to land use planning, namely, the very nature of the traditional common law remedies available in the courts for dealing with different forms of interference with land; the normal clientele of lawyers; and the professional life-style of lawyers. The lawyers do not fully appreciate the benefit of planning.

Simply put, the lawyer, by the very nature of his orientation, recognises more the individual proprietary rights of the land owner. Secondly, most of these wealthy landlords and landowners are the clients of the lawyer. He represents their interests and speaks on their behalf in their attempt to either obtain property or prevent other parties from obtaining their property. A very good example here is the uneasy relationship that exists between such property owners and the public authorities that may from time to time wish to acquire their property for public purposes. The manner in which the lawyer's work is organized (especially the barrister) also serves as antithesis of planning. McAuslan observes in this respect that:

Barristers are virtually unable to plan their week's work, or in some cases, even their day's work. They live at the mercy of events over which they have scarcely any control.. Living at the mercy of events, dependent on market forces and individual efforts, the barrister easily adopts an attitude of opposition to the concepts and notions behind land use planning.¹⁰⁷

We can draw a number of conclusions from this analysis. First and foremost, the very type of clientele which the lawyer represents and the nature of services he is expected to render to these clients influence his own concept of land use planning. Thus, instead of appreciating certain merits in planning he sees the entire idea of planning as something having adverse effects on the proprietary rights

and interests of the wealthy landowners who pay him heavily to protect those rights. He does not see the social effects of the existing land use planning system on the lives and living conditions of the less privileged members of the society. Even when the public authority attempts to acquire the property of his client in order to improve the social and economic condition of the thousands and millions of the poor and needy citizens of his society he works so hard to protect and assert the rights and interests of his individual clients against the overall interests of the society of which he is a member.

McAuslan went on to observe that, it is not unusual to find a lawyer, in a zeal to protect and assert the rights and interests of his client, citing some old judicial precedents such as Rylands v Fletcher, 1868,¹⁰⁸ St. Helen's Smelting Corporation v Tipping 1865¹⁰⁹ or even Cooper v Wandsworth Board of Works, 1863.¹¹⁰ Such a lawyer is not unaware of the fact that it is well over a century since these cases were decided, nor is he ignorant of the obvious fact that so many changes may have taken place in terms of accretion of statutory powers, duties and prohibitions in respect of land use, yet he insists on citing and relying on these old cases to buttress his arguments in favour of his client.

This observation depicts a common attitude among the members of the legal profession in England and in almost all the Third World countries that have adopted the common law principles.^{110A} Even in America, it was once observed by Bryde that the role of the American lawyer in social and economic development has been generally negative and to some extent obstructionist¹¹¹. This same professional attitude prevails in much of Africa. Lawyers in this part of the world seem to be imprisoned in the cocoons of their profession. Whether in private practice, on the bench or in some other engagement

lawyers tend to have an inclination and a common interest to preserve the purity and technicality of the legal profession. Until recently, there had been a total failure on the part of African lawyers to pay attention to other political, social and economic considerations which by and large predetermine the nature and conditions of the environment in which they practice. It is this attitude which has portrayed our profession as a "traditionally conservative defender of established interests rather than innovators"¹¹² This state of affairs has been a matter of grave concern to students and eminent scholars in the area of law and development. The principal question which we, from the Third World and particularly from Africa, need to address ourselves to is exactly what Modibo Ocran, a Ghanaian development law scholar had asked, and we pose here: "What contributions can legal Institutions and legal theory make towards the quest for economic development in Africa? Do lawyers have anything at all to say about the strategy for economic development? Which of their ideas and mental attitudes need to be modified or discarded if lawyers are to play a useful role in the development process?"¹¹³ (Emphasis ours)

These questions touch precisely on the central issues surrounding what law and development is all about. If we accept the fact that law should be seen as a means of shaping development then the answers to the above set of questions would not be very difficult. First and foremost, laws should be fashioned in such a way that they are able to create simple understanding for major economic transactions, organizing complex enterprises and structuring choices in decision making. This instrumental notion of law must be accompanied by a new

concept of a lawyer's skills. In other words, it must be borne in mind that the use of modern law requires not only technical legal knowledge but, equally important, unique skills in formulating and interpreting rules, ascertaining evidence as well as weighing and mediating between competing interests. These, to our mind, represent some of the basic issues that lawyers in the developing countries must bear in mind if they are to play their role adequately in the development process.

Also highlighting the role of a Third World lawyer in the development of his environment Wolfgang Friedmann has this to say:-

The contemporary lawyer ... in the developing nations must become an active and responsible participant in development plans.

An ever increasing... part of the work of the lawyer is neither litigation nor the resolution of disputes. It lies in the scope and formulation of policies in the exercise of legal powers constructively establishing or altering the relations between private legal parties inter se, between public authorities and private parties, between governments and foreign investors, and the like.... In all these questions, the lawyer must play an important, often decisive part. It is he who must draft the necessary legislation, or complex international agreements, it is he who will usually be the principal or one of the principal representatives of his country in international negotiations... It would be as artificial as it would be wasteful of the still desperately scarce trained man-power resources of developing countries to believe that the lawyer should or could confine himself to strictly legal issues.¹¹⁴

Another issue which has served as a formidable obstacle in getting the lawyers to appreciate the need to have a fair knowledge of other professions has been the nature of the legal education to which they were exposed in the early days of their career. Starting from the very foundation of legal education, the curriculum is completely devoid of an inter-disciplinary approach on the applicability of the principles of law imparted by lectures. In its findings the experts

committee on law and development research had this to say on the type of legal knowledge being imparted to students:-

.... Other problems are connected with the nature of legal training. Legal education has everywhere emphasised learning in legal doctrine, and there has been little training in social science research concepts and methodology. This is a serious factor, for we found that even in places where there is growing impatience with doctrinal research and its limitations, the scholars are often unable to proceed to social and policy research because of the deficiencies in their own research training. It is significant that some of the outstanding law and development researchers have taught themselves new concepts and methodologies.¹¹⁵

This particular finding by the committee further confirms the fact that no matter what role the lawyer chooses to play in the society the nature of his initial legal training and background influence his attitude to other disciplines, as well as his mentality and concepts of the exact role he has to play in the society. His educational background was the type that did not give him the opportunity to see the significance of his chosen profession and its skill as imperative to nation building. Instead he was, due to the complex technicalities of procedure and generally incomprehensible jargon in the traditional law subjects made to believe that he is one of the custodians of a highly specialised source of knowledge. This led many lawyers to consider themselves as "members of the honourable profession". The finding is also a pointer to the fact that this mentality and inhibitions that lawyers have as a result of their legal training is not only restricted to lawyers in private practice. There is always a high demand for lawyers in Government Departments, Local Authorities and various Boards and Corporations. This shows the need for a change of attitude not only on the part of lawyers but also on

the part of our universities and various law schools. Unless and until they adopt a multidisciplinary approach to the teaching of law they will continue to produce lawyers who will remain strangers to other professions and contribute little or nothing to the development process. For as was observed:

No other branch of social activity is so intensely human as the law, for no other subject invites us to consider all aspects of human life together¹¹⁶

Before we end this chapter it may be relevant to cite an example of a Third World country where law is increasingly being used as an instrument of inducing development.

Tanzania is unusual in its use of law to induce development. This is evident in the various social and economic reforms that have taken place in the country since Independence. Almost every major decision taken or policy formulated is being preceded by a specific piece of legislation. Take for instance, the nationalisation of all major means of production in Tanzania following the Arusha Declaration. Although the declaration itself is a broad policy statement which outlines the type of society that Tanzania aspires to build, its implementation in practical terms is followed by some specific statutes establishing the various institutions that will eventually transform the society and usher a new era of socio-economic prosperity and even development. For instance, the National Insurance Corporation Act of 1967¹¹⁷. This particular statute nationalised all private Insurance business and placed it in public ownership. Also, in the area of banking, the Parliament enacted the National Bank of Commerce Act of 1967¹¹⁸ which nationalised all banking enterprises. Similarly, in the field of Industry, various Acts were enacted to place industrial activities into public ownership. With

the Public Corporations Act of 1969, as an enabling statute many public corporations were established by the President to ensure a more meaningful development. Some of these corporations included the State Mining Corporation, the National Textile Corporation and the National Chemical Industries, to mention a few.

In the area of urban planning and development the law was also used as an instrument of inducing change and ensuring a more balanced development. A single event that is particularly relevant here is the conversion of freehold to leasehold land tenure system in 1963. This was achieved through the 1963 Freehold Conversion Act.¹¹⁹ This statute was aimed at giving the Planning Authorities more access to land as well as wider powers to control the use of land for purposes of urban planning and development. Under the freehold system the planning authorities had no control over the ownership and use of individual land holding. But under the lease-hold system introduced by the new statute, the planning authorities have powers to stipulate conditions governing the use of land.

Apart from the various statutes being enacted to maximise the use of law to induce development in Tanzania, the law school of the University of Dar es Salaam is also contributing its quota by ensuring that the students are trained in such a way that they possess the necessary skills and aptitudes required to serve the need of the Tanzanian community. By going through the University of Dar es Salaam law school curriculum¹²⁰ one can see that the legal knowledge imparted to the students covers the necessary core subjects in legal studies and at the same time touches on other areas of discipline that may be dictated by local or regional considerations. This, to our

mind, is a step in the right direction. This is because we in the developing nations have allowed our thinking in relation to legal education to be dominated by the question of what structure should be used rather than by the ends the structure is intended to serve. This perhaps explains why after many years of political independence many African countries continue to adopt the form of legal education inherited from the colonial masters. What we need to understand is the simple truth that there is no magic in any particular form but that social economic and political circumstances vary from country to country and so must our educational and legal systems be fashioned so as to conform with our peculiar socio-economic circumstances.

We have attempted, in this chapter, to highlight some of the major theories that relate to the relationship between law and development and the role of law and lawyers in the entire development process. As earlier indicated, this chapter is meant to serve as a foundation upon which to build the remaining chapters that follow. We hope some of the theoretical issues highlighted and discussed in this chapter will be reflected in practical forms in our general discussion and in the specific case studies to be undertaken in this thesis.

As the title of this thesis suggests, our main focus is on law and administration in urban development. The urban development corporations we shall be paying special attention to are the capital development authorities. We may now move to Chapter Two where we intend to begin by examining the current urban crisis in most of the major towns and cities in general and the capital cities in particular the world over. This second chapter sets out to explore the root causes of the urban crisis particularly in the Third World capital cities and the steps being taken to provide adequate solutions to such problems.

CHAPTER ONE
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1.

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8. Other writers prefer to use such terms as "migration of laws" or transplantation of laws". The former term tends to convey the message that it was the laws themselves that decided to wander from the society of their origin to new societies overseas, whereas the truth of the matter is that the laws were forcibly shifted by human agency.
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22. Ibid. Also Pound: "A Theory of Social Interests" Vol. 15 Papers and Proceedings of the American Sociological Society (1943 revision) pp.16-44.
23. See Federal Republic of Nigeria. Guidelines for the Fourth National Development Plan 1981-1985, published by the Federal Ministry of National Planning, Lagos, Nigeria, p.10, paragraph 9.
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25. See Preston, P.W., Theories of Development Routledge and Kegan Paul 1982, London, Boston, Melbourne and Henley, p.17.
26. See Federal Republic of Nigeria, Guidelines for the Fourth National Development Plan 1981-85, op.cit. p.20.
27. Ibid. p.20 paragraph 7.
28. See generally, for example, H. Myint: Economic Theory and the Under-developed countries, Oxford University Press, New York 1971 pp.3-27; P.T. Bauer: Equality, The Third World and Economic Delusion Harvard University Press, Cambridge, Massachusetts, 1981 pp.214-266; Ian Roxborough: Theories of under-development The MacMillan Press Ltd., London: 1982 pp.1-69; Ralph, I. Onwuka, Development and Integration in West Africa, University of Ife Press, Nigeria: 1982 pp.10-13.

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35. Burg, E.M. "Law and Developement: A Review of the Literature and Critique of Scholars in Self-estrangement" (1977), 25 *American Journal of Comparative Law*, p.492.
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37. See Arnold, H.J.P., *Aid for Development: A Political and Economic Study*, London, The Bodley Head, 1966, p.46.
38. Black, L.D. *The Strategy of Foreign Aid*, Princeton, New Jersey, D. van Nustrand Co., 1968, p.71.
39. *Ibid.* p.76.
40. See section 2167 of the Act. The Act now forms part of Chapter 32 of the U.S. Codes.
41. See Section 2151 of the Act.
42. Butler, B.E., "Title IX of the Foreign Assistance Act. Foreign Aid and Political Development", (1968), Vol. III No. I, *Law and Society Review*.

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44. Merryman, J.H. "Comparative law and social change: On the origins and revival of law and development movement" (1977) 25. American Journal of Comparative Law, p.458, fn 4.
45. Trubek, D.M. and Galanter, M., "Law and Society: Scholars in Self-estrangement; op. cit. p.1067.
46. See Ford Foundation, Annual Report, 1966, p.23. The I.C.L.D. was initially known as the International Legal Centre (ILC) when established in 1966 but was renamed I.C.L.D. in 1977. See ICLD Evaluation Report 1984, p.12.
47. See for instance, ILC, Law and Development New York, ILC, 1974 and Legal Education in a Changing World ILC, New York, 1975. Both documents are Reports of different expert committees of Internationally distinguished scholars. They contain findings, comments and recommendations of these committees on Legal Education and the relationship between law and development. These reports were published under the auspices of ILC.
48. See for example, Parker, "Our Great Responsibility: We must lead the World in Freedom and Justice", (1958) 44. American Bar Association Journal; Malone, "Promoting the Rule of Law: The role of American Lawyer" (1959) 45. ABAJ; and Wilken, "A glorious opportunity for American Lawyers" (1961), 47 ABAJ.

49. See footnote above.
50. See Harvard Law School, International Legal Studies, Report of the Director, 1954-1961, p.3, quoted in Burg. op. cit. p.495.
51. See Trubek and Galanter, op. cit. pp.1070-1079.
52. Ibid p.1088.
53. Ibid. p.1071-72, See Snyder, F.G. "Law and Development in the Light of Dependency Theory" (1980) Warwick Law working Papers, University of Warwick, p.732. See also Law and Society Review, Vol. 14 No. 3 (Spring 1980).
54. Snyder, op. cit. p.732.
55. Trubek and Galanter (1974) op. cit. p.1079.
56. Griffiths, J. "Is Law Important?" (1979) New York University Law Review of 1979 vol. 54, No. 2 at p.1089.
57. See Ford Foundation Letter 91975) Vol. 6, No. 1, p.5-6.
58. See Merryman, op. cit. p.460.
59. See McChesney, A., "The Promotion of Economic and Political Rights Two African Approaches" (1980) Journal of African Law, Vol. 24, No. 2, pp163-205. See also Ghai, Y. P. Reflections on Law and Economic Integration in East Africa, Uppsala, S.I.A.S., 1976, Research Report No. 36.

60. The Law and Development Programme (post graduate level) introduced by the Law School in Warwick University is now a big success. Research students on this course are mostly from the Third World countries. Similarly, University of Birmingham in England offers courses in law and development.
61. Francis G. Synder, "Law and Development in the light of Dependency Theory", (1980) op. cit. p.729.
62. See Trubek and Galanter, (1974), op. cit. pp 1063, 1067-68.
See also International Legal Centre (1974): Law and Development: The Future of Law and Development Research, ILC, New York.
63. Snyder, F. G. op. cit. p.729.
64. Trubek and Galanter, op. cit. pp.1067-1068.
65. Ibid. p.1079
66. Merryman, op. cit. p.483.
67. See Nyhart, J.D. "The Role of Law in Economic Development" (1962) I. Sudan Law Journal and Reports, p.396 and Allot, A. N., "The Unification of Laws in Africa" (1968) American Journal of Comparative Law, p.51.
68. See, mainly, Seidman, R. B. The State, Law and Development, Croom Helm London, 1978.

69. Burg, op. cit. p.506.

70. Seidman, R.B., The State Law and Development, op. cit. pp22-23.

71. Ibid. p.76-77.

72. Ibid. see particularly chapters 6, 7 and 8 and chapter 22, pp.462-463.

73. Ibid. see chapters 11, 13 and 14 and particularly chapter 22, pp.463-464.

74. Ibid. see particularly chapter 11, p.464.

75. Ibid. p.465.

76. Ibid. see chapters 4, 11, 13 and 16 and particularly chapter 22, pp.465-466.

77. See ibid. pp.464-465 and pp.466-467.

78. Ibid. p.468.

79. Here he means the general lack of social discipline in the developing countries which manifests itself in, among others, deficiencies in legislation, law observance and enforcement as well as the large scale corruption that is almost becoming part and parcel of the normal lives of the people and governments of the developing nations.

80. The State Law and Development, op. cit. p.34, see also F. Barth, 'Models of Social Organization', Royal Anthropological Institute Occasional paper No. 23, (Glasgow: The University Press, 1966).
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82. G. Hyden, TANU YAJENGA: Political Development in Rural Tanzania (Nairobi: East Africa Publishing House, 1968) p.192.
83. See Bryde, B., The Politics and Sociology of African Legal Development, Frankfurt, Am. Main, Alfred Metzner Verlag, GMBH 1976.
84. Ibid. p.22.
85. Ibid.
86. Ibid. p.1 and pp.42-53.
87. Ibid. pp.34-42.
88. Ibid. p.52.
89. Ibid. pp.191-193.
90. Seidman, "Elite, Law and Development" (1977) ALS, p.78.

91. Ibid., pp.79-81.
92. See Bryde, B. "Elite, Dead Horses and The Transferability of Law" (1977) ALS No. 15, pp.91-92 "Rejoinder to Professor Seidman".
93. See Snyder, F. G. "Law and Development in the Light of Dependency Theory", op. cit. p.781.
94. Ibid., pp.781-782, see also Mutunga, W. "Commercial Law and Development in Kenya" (1980) 8, International Journal of Sociology and Law, No. 1, pp.1-17.
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96. Ibid., p.469.
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99. Harris, J. W., Legal Philosophies, London, Butterworth, 1980, p.251.

100. Ibid., pp.251-252.
101. See Marx and Engels Selected Works, Vol. 1, Moscow, Progress, 1969 p.503.
102. See Marx and Engels, collected works, Vol. V, op. cit. p.90-92.
The original of this passage was contained in their The German Ideology.
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104. Akinkugbe, O. O. "The Role of Lawyers in Society" in T.O. Elias, (Ed) Law and Social Change in Nigeria, University of Lagos Press, 1972, p.14.
105. See "Law and Development" (The future of law and development research), ILC, New York, op. cit. p.17.
- 105A See Akinkugbe, O.O., "The role of lawyers in society" in T.O. Elias, (Ed) Law and social change in Nigeria op.cit. pp.14-15.
106. McAuslan, J.P.W.B., "The Plan, The Planners and The Lawyer", [1971] Public Law, p.247.
107. Ibid.
108. (1868) LR 2 H.L. 330.
109. (1865) II H.L. Cas 642.
110. (1863) 14 C.B. (N.S.) 180.
- 110A See Kanyeihamba, G.W. Urban Land, Planning, Housing and the Law in East Africa with special reference to the city of Kampala, LL.M. Thesis University of Warwick, 1972 pp.98-100.

111. See Bryde, Elbert, M. Jr.: "The Role of Lawyer in the Economic and Social Development of his Country within the Framework of the Rule of Law", 9164 Journal of the International Commission of Jurists, 1963, Vol. V, Nos. 1-2, p.55.
112. See W. Friedman, "The Role of Law and the Function of the Lawyer in Developing Countries" Vol. 17, Vanderbilt Law Review, 1963-64 pp.181-191.
113. T.M. Ocran: Law in Aid of Development (Ghana Publishing Corp., Accra) 1978. These questions were posed at P.XII of the Preface to the book.
114. W. Friedmann, op. cit. (see note 106 above) quoted in "Lawyers in the Third World: Comparative and Developmental Perspectives. Edited by C. J. Dias and 3 others. 1981 - Scandinavian Institute of African Studies and the ILC - at p.15.
115. Law and Development Committee Report, Op. cit. ILC New York, 1974, p.46.
116. In Graveson R. H., ed: Law: An outline for the intending student, London, p.7.
117. See The National Insurance Act of 1967.
118. National Bank of Commerce (Establishment and vesting of Assets and Liabilities) Act, 1967.

119. See Freehold Titles (conversion) and Government Leases Act, 1963 (cap. 523). The Land Use Decree of 1978 in Nigeria has also the same effect.

120. For a detailed structure of the law courses available in the Law School of Dar es Salaam University see 1976/77 University of Dar es Salaam Calendar pp.171-182.

CHAPTER TWO

URBANIZATION: PROBLEMS AND SOLUTIONS

As already indicated at the end of the last chapter, the main focus of this thesis is on the area of urban planning and development. There is no doubt that since the turn of the last century modern civilization and rapid urbanization have affected the growth of many towns and cities all over the world.¹ Many towns which were of medium size have grown into big cities. At the beginning of the last century, the world was estimated at about only 3 per cent urban.² By the end of that century the concentration of population in cities was discovered to have been 'the most remarkable social phenomenon'.³ The world is now said to be almost two-fifths urban and by the year 2000 the world may be fully one half urban⁴. This social phenomenon is affecting the developed⁵ nations in almost the same way as is affecting the developing countries. But while the advanced countries are using their own technological and economic might to overcome the problems posed by urbanization, the situation in the Third World is deteriorating daily. This is simply because urbanization in the Third World has not been accompanied by economic prosperity as it was in the developed nations. On the contrary, it has led to a major increase in inequality in income and basic infrastructural services.⁶

In this chapter, we intend to examine the problems of urbanization and their possible solutions. In both the first and the Third World countries governments have, in collaboration with physical planners, tried to look for ways and means of attaining solutions to contain deteriorating urban conditions and to enhance overall regional

development.⁷ The choices for these governments have been either to expand their existing urban area's boundary so as to cope with the influx of population into the towns and cities, or to establish entirely new towns as satellite centres for the purposes of accommodating more population, resource exploitation and regional development. When either choice is made, there is the necessity of appointing an agency to implement the physical planning and development of the new town or extended urban area. As far as the developing countries are concerned, their capital cities, more than any other urban settlements, have suffered as a result of urbanization. This has led to a new momentum in creating new capital cities. This is why we intend to divide this chapter into three sections. Section A discusses urbanization generally and how this has led to the new town idea in Africa. This section is meant to show why the trend in building new towns in Africa has involved mostly the shifting of capital cities. Section B will endeavour to show that even in the Western nations, the new town idea was developed largely as a response to rapid urbanization and population influx into the capital cities. Here the case of congestion in London and other major towns and cities in the United Kingdom which led to the policy of building new towns will be fully examined. In the third section of this chapter we shall attempt to analyse, in the light of the Third World urbanization and that of the advanced countries, what agency should be used as the most effective vehicle for planning, developing and managing the new urban settlements that are being built. We may now move to Section A.

SECTION A

URBANIZATION AND THE CAPITAL CITIES

The most convenient starting point may be to begin by seeking an acceptable definition of the term 'urbanization': The term 'urban' may vary from one country to another, and even within regions of the same country. In defining urban areas, different nations may adopt various demographic, cultural, historical and political criteria. However the concept of an urban area usually presupposes an environment different from that of the surrounding rural area or countryside. There is no hard and fast rule as regards the net population⁸ necessary to constitute an urban area. To adopt a definition on the basis of a specific figure will drastically change the rural - urban sectors of many countries. But based on a survey of censuses in fifty-two countries, the United Nations has identified five major concepts which are most frequently used:⁹

- (i) Administrative Area: areas corresponding entirely to some of the administrative divisions of the territory (e.g. Metropolitan Council).
- (ii) Population Size: areas identified with places having either a specified number of inhabitants or a specified minimum number of inhabitants by unit of area.
- (iii) Local Government Area: areas identified with places possessing some form of local Government.
- (iv) Urban characteristics: areas identified with places possessing certain urban characteristics, such as established street patterns, contiguously aligned build-

ings, and one or more such public services as sewerage, piped water supply, electric lighting, church, police station, hospital, market facilities, educational institution, court of law, means of transportation etc.

- (v) Predominant Economic Activity: areas identified with places where a specified proportion of the economically active population is engaged in non-agricultural activities such as industry, commerce or transportation.

With the above five major concepts the reader will certainly form some basic ideas of what constitutes an urban area. There is however one more distinction which may require our attention. that is the distinction between the term 'urbanization' and 'urban growth'. This line of distinction may not be an obvious one but the author believes that it is worth drawing in dealing with a subject of such imposing dimensions as urbanization. While urbanization refers to the growth of population living in urban places relative to that of the country as a whole, the term 'urban growth' points to the growth of individual cities and towns, which is a narrower and more specific observation of the specific location of growth. Having attempted a definition of what constitutes an urban area and what is meant by urbanization as distinct from urban growth we may proceed to discuss urbanization with particular reference to the Third World countries. It is important to point here that, urbanization in this section of the chapter is being considered more from the impact it has had on the capital cities of the developing countries of Africa.

THE CAPITAL CITIES

The sudden growth of towns and cities in the Third World was much more dramatic in the capital cities, particularly in Africa. This occurred mostly after the second World War. Capital cities like Lagos and Kinshasa grew into a million people each in the 1970s and many other capital cities increased to almost half a million.¹⁰ Similarly, in countries like Togo, Senegal, Liberia and Guinea, their capital cities are reported to be "nearly seven times bigger than the next largest towns"¹¹ It is therefore not surprising that some writers describe the current rate of growth and the projected growth of some capital cities in Africa as 'extraordinary'.¹² (see table 1 below)

TABLE 1

GROWTH OF SOME SELECTED CAPITAL CITIES (000's)

	Estimated population in thousands			
	1950	1960	1970	1980
Ibadan	430	550	750	1100
Addis Ababa	350	500	850	1300
Lagos	250	600	1600	3000
Kinshasa	220	500	1400	2700
Khartoum	210	380	650	1100
Dakar	180	380	600	950
Accra	160	390	740	1100
Luanda	150	250	470	750
Harare	140	280	400	800
Nairobi	130	270	510	900
Abidjan	80	220	600	1200
Dar es Salaam	80	170	380	800

SOURCES: O'Conner, A., The African City, Hutchinson, 1983 p.48

It can be seen (from Table 1) that the projected growth of some capital cities in Africa is little short of extraordinary. Between 1940 and 1960 Africa's overall rate of urban growth - at about 5 per cent per annum - was said to have ranked with the world's highest rate of urban growth.¹³ As far as urbanization in West Africa is concerned, in two thirds of the countries of that region, the population of the capital city is reported to have more than quadrupled over the last two decades.¹⁴ We may now proceed to identify the main reasons behind such an unprecedented rate of growth of the capital cities in Africa.

CAUSES

One cannot give a true picture of the root causes of influx of people into the capital cities in Africa without first of all tracing the history of such capital cities as far back as the colonial era. Although the massive development investments and industrial transformation that have taken place in most of the capital cities of Africa in the past few years are contributory factors to their present inadequacy, the history behind their present geographical location is largely responsible for their inability to cope with the mass population movement in recent years.

COLONIAL ERA

Most of the capital cities in Africa came into existence during the colonial scramble of the past one and half centuries. Although each colonial power did organise and administer its colonies and

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territories in ways and manners best suited to it, there was one motive, among others, which was common throughout the period that witnessed the territorial acquisition. This was the economic factor. The economic viability of an European state then depended on the extent of its overseas possessions. The only major avenue into the interior part of ^{coastal} colonies was through the river valleys. It therefore became very convenient for the colonial masters not only to operate from the coastal towns but also to have them as their base for speedy link with Europe. Virtually all the coastal towns and cities started as small settlements and were so situated because at one time or another their sites served as important contact points between Africa and Europe. Such settlements included Rufisque, in Senegal; Bissau, in Guinea; Accra, in Ghana; Dar es Salaam, in Tanzania; Port-Novo, in Benin Republic and Lagos in Nigeria just to mention a few. Thus, the locations of these cities were determined principally by their accessibility from the sea and by the productivity of their hinterlands. This was necessary as far as the colonial powers were concerned. It was the best way they could facilitate the transshipment of all forms of natural resources from their newly acquired colonies. This simply shows how the present capital cities were literally imposed on various countries of Africa. As far as the colonial masters were concerned they saw such imposition as a necessary strategy to maximize their administrative and economic convenience.

No sooner had these countries got their political independence than they realised the need to readjust their socio-economic and political priorities to conform with the current needs and aspirations of their people. It is in keeping with this that many of these

countries today realise that the physical location of a capital city does not only reflect its political direction but also determines its economic status and infrastructural development. This wind of realization which blew across many countries in Africa has led to the emergence of several new capital cities. Their emergence was also a natural response to the rapid urbanization and its concomitant social problems in the former colonial capital cities. We may briefly examine some of these social problems and the ability of such cities to cope with them.

MIGRATION

There has been a big physical and cultural gap between the capital cities and the countryside in Africa during and after the colonial period¹⁵. Long after Independence, urbanization in Africa is characterised by severe inequalities.¹⁶ Even though the post Independence era in most African countries has witnessed a great deal of improvement in the fields of transportation, communication and other infrastructural services, such improvements were only found within the capital cities. Any one who ventures beyond the capital cities of these countries is stunned by the disparity between the concentration of resources in the capital cities and the neglect that is the fate of much of their hinterlands. The concentration of so much political, administrative, educational and economic activities in Dakar, Conakry, Free-town, Monrovia and Abidjan, almost to the total neglect of other parts of these countries, was described as one of the main factors of urban problems in those countries.¹⁷ Perhaps, no where in Africa provides a better example of over-concentration of

public amenities and economic activities in the capital city than the Ivory Coast. 499 out of the country's 617 industrial enterprises are located in Abidjan and 60% of the jobs in the modern sector of the economy are found there.¹⁸ Also in the year 1968 one of the largest and most modern hospitals in Africa was built in the luxurious Cocody quarter, home of high government officials in the Ivory Coast. The funds given by France, which were later used to build this eight storey modern hospital (the 500 bed Centre Hospitalier Universitaire), were originally intended for twelve regional hospitals in the country.¹⁹ With this consistent bias in favour of Abidjan, it is not surprising that the city's population has been increasing almost beyond control.

Another capital city that has had more than its fair share of the available infrastructural services in Africa is Dakar. In the mid-1960's Dakar alone received three-fifths of the national health budget and had four-fifths of the medical doctors and two-thirds of the midwives in all Senegal.²⁰ Also nearly 80% of industrial enterprises, 66% of all salaried employees, and 50% of civil servants in Senegal are concentrated in the Dakar area.²¹

Lagos and Dar es Salaam also enjoyed a considerable monopoly of commerce and industry in comparison to other towns and cities in Nigeria and Tanzania respectively. In the case of Dar es Salaam it was observed that:

.... Dar es Salaam is Tanzania's largest city, most important port, as well as its capital. What limited industry Tanzania possesses is mainly concentrated in this urban centre. Railroads connect the Western and Northern parts of the state to this city, but development in its immediate hinterland is in its initial stage.²²

The situation in Lagos is virtually the same, with the pattern becoming more pronounced in recent years. In 1964, above 35% of employees in Nigeria's manufacturing industry were working within the boundaries of the present Lagos state. By the year 1972 more than half of Nigeria's manufacturing industry was located within this same territory.²³

The examples cited in the foregoing pages clearly show how much the interior parts of many African countries have suffered as far as uneven development is concerned. Lagos, Dar es Salaam, Abidjan, and Dakar have all enjoyed the concentration of major commercial and industrial activities at the expense of their various hinterlands. The inevitable result of such negative policies has been a massive exodus of population into these capital cities with or without the hope of finding the most marginal job.

Even if such migrants fail to raise their living standard in the city they have very little or nothing to return to in their rural place of origin. After-all there are various psychic rewards that attract most rural people to the city. There is first of all, the common desire amongst the young and able members of the rural community to enhance their personal independence and be away from the traditional parental control irrespective of sex or status.²⁴ There is also the irresistible lure of the prestige associated with urban living. This brings the migrant closer to his own concept of modern life as opposed to his fellow villagers living in the rural areas.²⁵ Thus the capital cities of the developing countries continue daily to attract thousands of people from the hinterlands. The question that comes to mind is whether these capital cities can cope with this influx of migrants in terms of social infrastructure and economic opportunities.

The economic opportunities available in the capital cities and major urban centres of the developing countries are very limited. Thus the earning capacity of the urban dwellers is equally limited. The pace of industrialization in these developing nations is very slow and the majority of urban inhabitants are themselves living at subsistence level.²⁶ This obviously makes the absorptive capacity of the capital cities in the form of employment, housing and health facilities and social infrastructure very limited indeed. The saddest thing is the fact that the volcanic rate of urbanization and the growth of cities, particularly capital cities, in the developing countries tend to show that future requirements for essential services may be even greater since the influx to such cities appears set to continue for an indefinite period. The inevitable consequences of this vicious circle are: universal poverty, housing shortage, urban slums, environmental squalor and a host of other socio-economic problems in the capital cities of the developing nations.²⁷

The foregoing general discussion does reveal the full extent of urbanization crisis in the developing countries and how it constitutes a menace in the capital cities of these countries. As earlier mentioned in this section, the trend in a surprising number of developing nations is to attempt to solve the problem of rapid urbanization by building new capital cities in areas that are geographically central in those countries - Lilongwe, Abuja and Dodoma are all located almost exactly in the centre of their respective countries. Before we end this section we may briefly examine the rationale behind the geographical centrality of these new capital cities as far as urbanization and social, political and economic developments are concerned.

Geographical Centrality

Though the functions of a capital city may depend largely on the political structure of the country in question, there are some functions that remain common among all capital cities the world over. All capital cities house the chief executive of the State. Also the civil service headquarters and other important government departments are located within the capital cities. Foreign Embassies and other International organizations are mostly located in the capital cities. This role therefore makes all capital cities the nerve centre of all major political and administrative activities. Such cities also serve as binding agents, particularly in a Federal State, between the various political interests within the Federation. This particular function is the underlying principle governing the idea of a centrally located capital city. Centrality often serves as a point of compromise between major ethnic groups within one sovereign state. No place provides a better example of this point than Nigeria. Not only has this country got three major core areas,²⁸ but also these areas are individually defined and clearly unique in terms of ethnic characteristics, economic activities and historical associations²⁹. For a complex country like Nigeria there could not have been a better compromise than the selection of a new centrally located capital territory which does not fall within the sphere of dominance of any of the three main ethnic groups. Apart from reconciling an outstanding ethnic and regional rivalry, a centrally located capital city has the advantage of being in a strategically more secure zone in emergency and war situations.³⁰

Another important argument often advanced in favour of a centrally located capital is its potential as a growth-pole³¹. There is no doubt that a centrally located capital is more accessible and nearer to more rural population than that located at the extreme end of a country. Also, it is much easier to control and effect even development when operating from the centre than from the periphery. Taking cities like Lagos and Dar es Salaam, it can be seen from our earlier discussion, that the population and most of the economic activities of these countries are predominantly located in and around these coastal towns. But with the emergence of Abuja and Dodoma each country now has a centrally-located national capital acting as an integrating nucleus pulling the nation together. We are, therefore, of the view that the peripheral location of most of the capital cities in Africa was very much responsible for the urban social and economic problems enumerated in this section of the chapter as was the concentration of all major facilities within the capital cities. The growth pole theory of locating the capitals in a relatively central position is, in our view, one of the ways of ensuring a socially and economically homogenous society. It is also a way of ensuring that development spreads easily and evenly to all parts of a country.

We have attempted, in the foregoing pages, to illustrate how rapid urbanization was, and still is, causing problems in the developing countries, particularly the capital cities. The social and economic imbalance created by sudden growth of towns and cities were also highlighted. The creation of new capital cities by these developing nations, as elaborated above, represents a new strategy of ensuring that these nations have their own share of the advantages and the virtues of urbanization - economic, institutional, social and

political. We may now move to the next section of the chapter where we shall examine similar strategies meant to enable the more advanced nations to confront vigorously the problems created by rapid urbanization. The next section examines in particular the development of the new town idea in Britain which came as a direct response to the problem of congestion and overcrowding in London and other major cities in the United Kingdom. We shall also attempt to show how this novel idea of a new town was eventually accepted not only in Britain but in the whole of Europe and sold to the governments and public in many other countries of the world.

SECTION B

THE BRITISH NEW TOWN IDEA: ITS DEVELOPMENT AND IMPACT ON URBANIZATION

There is actually nothing particularly new or unique about the idea of new towns the world over. Every town was at some stage in the history of its development new. Also many philosophers and thinkers throughout the ages have had occasions to criticise the living standard of their era and to suggest certain modes of reforming the system and enhancing the living conditions in their society.³² The people, the environment and the circumstances under which those people lived and died were however significantly different from what we now have in the so called modern world of today. The mode of living in our contemporary world is governed by two fundamental factors, namely, economic and political power. It is in keeping with these prevailing realities that we seek to trace not only the historical background of the personalities and the underlying economic and political forces that evolved and helped to develop the idea of

what we now have as new towns but also to examine the institution adopted for the planning and development of these new settlements. There is no doubt that new towns, be they state capitals, national capitals or satellite towns are found in many countries all over the world today. This is the more reason why besides the evolution of the new town concept in historical perspectives we intend to examine how such a novel idea was eventually 'sold' to the government and the public at large. Not only that, we shall concern ourselves, in this section of the chapter, with the way and manner governments in different countries accepted this idea and promptly intervened not only by adopting official policies on urban development schemes but also by ensuring that such schemes and the agencies assigned to undertake them were given full legal backing by way of statutes.

HISTORICAL BACKGROUND

In many countries and for many years concern had been shown by different people for the quality of life in urban areas. The paradox however is the fact that all such concerns and opinions being expressed by people were mere theories. Theories in the sense that no single individual had the courage to take the bold step of demonstrating how such theories of improving the quality of the urban environment could be put into practice. This was despite the fact that in some countries studies were undertaken and also inquiries made on the city life. In Britain, for instance, such studies were undertaken as far back as 1296 AD.³³

The only meaningful move which stands in history as a positive attempt to translate the yearnings and aspirations of the people for

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The only meaningful move which stands in history as a positive attempt to translate the yearnings and aspirations of the people for

an improved urban environment was the laudable initiative taken by some industrialists in Britain by starting new communities in association with large new factories which they had built in the countryside: such as Bourneville (near Birmingham) which was built from 1879-1895 in association with the Cadbury chocolate factory, and Port Sunlight (near Liverpool) which was built in 1888 in association with a chemical industry.³⁴ Although these communities were only a minor version of the comprehensive 'garden city' model that was to follow, the fact still remains that it was the first and the best example of decentralizing industrial plants far from existing urban congestion. They produced well-laid-out villages which served not only as an example of enlightened housing development for industrial workers in the late nineteenth century but also:

Were a step forward, a sign that the conscience of the nation was beginning to stir and, that the link between housing conditions and industrial efficiency was beginning to be recognized.³⁵

Towards the end of 19th century living conditions were becoming increasingly bad. This affected not only the cities in Britain but also the countryside which were hitherto a little more manageable in terms of congestion and other sanitary problems. While the cities were getting too congested and overcrowded the people in the countryside were getting poorer. This was mainly as a result of the Industrial Revolution which relegated agriculture to the background. The average British farmer could no longer rely on agriculture as a paying venture. The farmers who now felt economically unprotected had little or no alternative than to abandon their farms and drift in their numbers from the countryside to the cities in search of jobs in the new industries.³⁶ Such an unprecedented influx of the rural

population into the towns and cities of Britain made life unbearable at the urban centres³⁷. Housing and public services were daily becoming inadequate and the towns and cities could no longer cope with the extensive population migration from the countryside. The absence of public transportation system in such towns and cities made the situation even worse. This made it necessary for the people to live within a walking distance to their places of work.³⁸ The situation however changed in the late part of the 19th century when public transportation systems were introduced. It is important to note that though the introduction of public transportation improved the situation it had some side effects. Availability of transport service made it less necessary for workers to live near their places of work and consequently the cities started spreading out. The sprawling nature of these cities and towns became another major area of concern for the politicians and planners. It was at this crucial moment that in the year 1898 Ebenezer Howard came out with his historic publication - Tomorrow: A Peaceful Path to Real Reform³⁹.

Howard's thesis was a simple one:-

He saw a town as a complete social and functional structure, limited in size to 32,000 people with sufficient jobs to make it self-supporting, spaciouly laid out to give light, air and gracious living well away from smoke and grime of the factories and surrounded by a green belt that would produce both farm produce for the population and opportunity for recreation and relaxation. Growth, design, and density would be strictly controlled through public ownership of the land⁴⁰

This idea seemed to so many people in those days to be utopian and very difficult for them to accept. But it was unlike Howard to sit back and wait for his ideas to be accepted. Instead he took it upon himself to sell these ideas to the public by way of action, by way of demonstrating practically the workability of his ideas. Soon

after that publication Howard initiated and founded the Garden Cities Association in 1899. This association was formed mainly with the aim of publicising the 'garden city' ideals.⁴¹ When he gathered the necessary momentum in terms of following he established a limited liability company, in the name of, 'the Garden City company' in the year 1902.⁴² He then used the company to acquire land on which he built a demonstration city at Letchworth some thirty miles out of London. This singular act of courage and exhibition of determination helped to publicise his ideas all over the world which led to the formation of Garden City Associations in many other countries.⁴³

Although many influential people supported Howard the development of Letchworth ran into difficulties. This was mainly because the public were not too keen in investing in that type of project which did not show any promise of quick returns. The company then started facing financial problems. There were also cases of internal dissension and organisational problems. As a result of all these the company incurred heavy losses which almost ruined the entire venture. It is interesting to note however that Howard and his supporters were not despondent as a result of this near failure situation at Letchworth. In fact, in 1919 he set out to establish yet another demonstration city at Welwyn.

This second attempt at Welwyn was destined to suffer the same fate. Just as the case in Letchworth, response from the public to subscribe to the Welwyn project was very discouraging. This made capital hard to attract. Also the fact that this project was initiated during the postwar depression made matters worse.

Although the foregoing paragraphs may portray the two demonstration cities as failures, the period marks the emergence of

an agency (The Garden City Company) solely for the purposes of undertaking major urban development. The Garden City company provided a testing ground, a model from which future modifications could be made regarding the planning and development of new communities. Above all, the major areas of administrative and financial weaknesses of these two unique schemes would provide ground for improvement and lessons to learn in such undertakings in future. Indeed despite all the hardship Howard and his supporters experienced there is ample evidence to show that:

Despite all the mistakes and obstacles, the towns were built, they have provided an enduring three dimensional expression of the general ideas for all the world to see. In the process of development the towns also pioneered some significant planning innovations, including use and density zoning, a form of ward or neighbourhood planning, employment of an agricultural greenbelt to control urban size and unified urban land ownership for the purpose of capturing rising land values for the benefit of the residents.⁴⁴

Legislative History

Having initiated these ideas and transformed them into practical realities what was lacking as far as Howard and his 'Garden City Dream' was concerned was official recognition by the government. Even though these ideas were developed as far back as the end of 19th century they were not officially recognised for almost forty five years⁴⁵. The destruction caused by the first world war was so great that the government had to embark on a full scale post war reconstruction programme. Housing problem was top of the list of socio-economic issues to be tackled by the government. London was daily becoming over populated and the existing physical and social infrastructure could not cope with the influx of people. It was at

this time that the Garden City advocates cried louder for a comprehensive government solution to these problems.

It is clear, from the above paragraph, that the nature of the problem was unmistakable and the Garden City advocates took advantage of the situation and reiterated the need for a coordinated plan of all facilities at a new site where land was cheap as against the unnecessary extension of the existing towns and cities which was costing the government and the people more money than would have cost them in a new virgin land with more space for planning and a healthy environment.⁴⁶ Many committees and commissions of inquiry were set up by the government and various recommendations made (which included a recommendation that Garden cities be founded.⁴⁷ but for well over ten years nothing spectacular occurred. The founder of the Garden City movement did not live to see when and how his brilliant ideas were finally adopted by the government. He died in the year 1928 leaving the responsibility of propagating his ideas to his close associates - F. J. Osborn and C. B. Purdom. Raymond Unwin and Barry Parker were yet another set of Howard's followers who did so much to develop his ideas.

There were hopes and expectations by the Garden City advocates when in 1931 the Greater London Regional Planning Committee, in a report by Raymond Unwin, recommended the building of satellite towns as a matter of urgency.⁴⁸ This was particularly important because it was a sign of renewed action at government level as far as the question of building new communities was concerned. There was also another committee under Lord Marley⁴⁹ which sat for four years and recommended the adoption of the Garden City. Despite these recommendations no further action was taken by the government and

indeed no action would have been taken if it were not for the intolerable overcrowding in London by 1937. (During the tenure of Neville Chamberlain as the Prime Minister).

In a desperate attempt to solve the problems the Prime Minister appointed a Royal Commission under Sir Montague Barlow. This Commission had two main objectives. (i) It was going to examine fully the causes of distribution of industrial population. (ii) it was also going to examine the effects of over concentration of industries and population in large towns and cities.⁵⁰ This commission was described as:

The Barlow commission expressed far more comprehensive approach to town planning than any previous published official document and plainly indicated the need for great changes.⁵¹

This commission recommended, among other things, the need for a new central authority as well as the need for national action so as to secure a number of things: the continued re-development of congested urban areas: the decentralisation and dispersal of industries and industrial population from such areas. It is important to note here that not even this comprehensive work by the Barlow commission was able to trigger any meaningful action on the side of the government as regards the building of new towns. This was also noted by Osborn where he said:

There were government-printed reports, available to all. But up to 1941 they might as well have been printed in Sanskrit for all their effect on the minds of the public or the sectional planners. What made the country planning conscious was the bombing of our cities in 1940-1941.⁵²

Thus the bombing of London necessitated quick action. Winston Churchill, who was then the Prime Minister, appointed Lord Reith to

advise on the post war reconstruction problems. Lord Reith then set up two inquiries with the help of some experts: one on the land problem under Mr. Justice Uthwatt and the other on the use of land in rural areas under Lord Justice Scott.⁵³ He also commissioned Professor Abercombie to prepare a new plan for London and Greater London. Lord Reith had the advantage of having all the previous reports and recommendations which lay on the shelves throughout the long period of indecision by the government. So, he accordingly re-emphasised the need for a national planning policy as well as an effective machinery for full organisation and control of post war development. The government responded with a series of laws. The Ministry of Town and Country Planning Act of 1943 created a new minister charged with the responsibility of securing consistency and continuity in framing and executing a national policy with respect to the use and development of land throughout England and Wales.⁵⁴ Thus the recommendation to create a central planning authority was being implemented.

One important point worth mentioning here is the fact that the present structure, legal and administrative framework of New Towns Corporations in Britain, and indeed Urban Development Corporations in many other countries, have their origin traceable to the findings and recommendations of the famous Lord Reith New Towns Committee. It may be necessary here to reproduce some of the conclusions and recommendations of the committee on choice of agency and the powers and structure of that agency that would implement the New Town Development programmes. At page 10 of its recommendations (New Towns Committee, Interim Report Cmd 6759, H.M.S.O. 1946) the Committee had this to say:

As our primary choice of agency is the Public Corporation, either government or local authority sponsored, we think it convenient at this point to make suggestions as to their constitution and powers:

(1) Government sponsored Corporation

(i) Constitution

- (a) Appointments should be by Crown and members should be removable on certificate of the appropriate Minister.
- (b) The governing body should consist of six to eight members.
- (c)
- (d)
- (e)
- (f) The term of office should be five years with staggered termination. Members should be eligible for re-appointment but it should not be automatic.
- (g) The Chairman should be of recognised public standing, and able to devote adequate time to the work. He and other governors should be part time.
- (h)
- (j)
- (k) The board should appoint the chief executive who should not be a member of the board.

(ii) Powers

- (a) The corporation must be vested with all powers required as free holders, feuars, or first leaseholders for determining policy, controlling development, granting leases and erecting buildings to whatever extent it may decide.
- (b)
- (c) The corporation should be authorised to supply public utility services where statutory undertakers are unable to do so.
- (d) The corporation should be authorised to make agreements with local authorities.
- (e) Public money should be available to the Corporation on the same terms as to local authorities.

It can be seen, from some of the recommendations of the Reith Committee quoted above, that apart from providing the answer to the general questions of the establishment and administration of the new towns and the appropriate agency required, this committee suggested major guiding principles on which the new towns should be established and developed as self-contained and balanced communities for work and

living. Furthermore, these recommendations provide a blueprint not only for the planning concept of the new towns but also for the structure and powers of the New Town Development Corporations and the Constitution and function of their board of directors.

The draft New Town Bill which was passed through Parliament in 1946 was based largely on the report and recommendations of Lord Reith's Committee. It therefore took a period of forty-eight years to get the new town idea fully recognised and adopted as a national policy. It may be relevant to note here that taking such a long time to get these ideas adopted as national policy, does not indicate any weakness or inactivity on the part of the new town movement:

Howard and his articulate followers, Unwin, Neville, Thomas Adams and others, were themselves no mean propagandists.... They stated the (Garden City) idea lucidly and did lodge it in many minds. Acceptance of their propositions was however delayed by two pieces of sheer historical bad luck - the coincidence in time of the suburban boom at the turn of the century and of the great national housing drive of the 1920s and 1930s.

Almost contemporaneously with Howard's book, the development of electric traction and the internal combustion engine began to revolutionise urban transportation, and it became practical for city dwellers to obtain without a serious increase in travel time, acceptable dwellings in suburbs.⁵⁵

The followers of Howard were undoubtedly happy with this development and were very pleased to see the realisation of their dream. It was a struggle which lasted for over forty years and which in the long run came to bear fruit. It must however be observed here that even though the pattern of the new town development was very much the same as the form and shape advocated by the Garden City movement, credit must also be given to other groups and individuals who contributed in no small measure to bring these ideas to reality. In fact, it was rightly observed that:

In many ways the new towns of Britain are a response to a unique set of social, economic and political conditions. These conditions include the massive urban problems created by 19th century industrial development, the scope of industrial mobility within a small country, and the acceptance by both main political parties originally through a mood of idealism nourished by wartime experience of the case for public initiative over urban development.⁵⁶

What the new town movement can boast of achieving is far more than the simple fact that new towns were built in new sites. More importantly, the movement triumphs in getting the government to accept and adopt such ideas as official government policy. This was unique and Britain had given the world a model not only in the practical aspect of building new communities but also in the evolution and subsequent development of town and country planning laws.

As the reader may notice we have, in the foregoing paragraphs, attempted to illustrate the origin of the early ideas of building new communities and how these ideas went through many stages before they were finally accepted as a national policy in Britain. For the purposes of the main focus of this thesis it is hardly necessary to go into such a lengthy background history based entirely on British experience. But considering the fact that Britain pioneered the new towns idea and that, so far, over thirty new towns have been built in Britain by special urban development corporations, a fair assessment of the British experience in terms of success and failure in the planning and development of new communities is of particular relevance to this thesis. We are however not unaware of the fact that there are vast differences between countries in respect of the needs to which new communities are intended to respond. But suffice it to say that for whatever motive a new town is built the social economic and settlement framework of the British new towns reveal general lessons

for all new communities to learn. We are also of the opinion that, not only in the area of urban planning and development, but invariably in all aspects of human endeavour, the present can only be comprehended and the future shaped if the past is fully understood. It was rightly observed, when commenting on the new national capital for Tanzania and what lessons the project draws from the British experience, that:

..... Although it was conceived in the early twentieth century; it was born in the early seventies and had a lot to learn from the knowledge and experience gained in Britain in the field of new town development over the past three decades.⁵⁷

The above quotation confirms the fact that many countries can gain from both the positive and negative experiences of the British new town development corporations. Our discussion on the British experience in this section is meant to illustrate the fact that by using a system of analysis reaching well back into the past, history can suggest a range of potentially workable solutions for current problems.⁵⁸ We may now, leaving the British experience aside, proceed to the next section where we shall briefly examine what ought to be the most suitable agency for undertaking the major task of planning developing and managing important urban development project as big as the building of an entirely new urban settlement.

SECTION C

NEW URBAN SETTLEMENTS: THE SEARCH FOR AN APPROPRIATE AGENCY

The two preceding sections may have given a fair picture of the social and economic problems that beset the major urban centres, particularly the capital cities of both the developed and the

developing nations as a result of the rapid urbanization taking place the world over. Our discussion, so far, shows that new towns are being planned and developed in response to this global urban crisis.

Once a decision is taken as to the need to build a new town, be it a satellite town or new capital city, the next point of consideration is the appointment of an agency to undertake the practical planning and development of the project. The need to have a competent and dynamic agency for the purposes of undertaking such a project cannot be overemphasised. There is no doubt that the planning and development of new urban communities is a project that occupies a very special place in the priority list of major development programmes of countries that embark on such ventures. It would appear that it is the trend, in most countries, to establish some special government sponsored and financed development corporations to plan and execute these projects.⁵⁹ This however does not mean that such countries cannot seek the services of the private sector for the purposes of urban development. The question that quickly comes to mind here is what actually is the best agency for the purposes of undertaking such major urban development projects? Should urban development corporations owned by the government continue to dominate the scene or should private enterprises be taken more seriously or should we resort to a single local government that is willing and economically capable of implementing such projects. In other words, we seek to examine these alternatives with the view to identifying which agency is most suitable for bringing about new communities that are economically and socially viable.

COMMERCIAL ENTERPRISES

We may first of all start by considering the option of using a purely commercial enterprise. The British experience in the planning and development of Letchworth and Welwyn through a limited liability company was a very bitter one. The lessons which were learnt from that experience were so many but the one point which still today remains particularly worthy of our notice is the fact that 'founding a new town, like planting a forest, is a long term enterprise unattractive to investors who look for a return within a few years.⁶⁰ Another important factor which perhaps made investment in such ventures very unattractive in Britain then was the terrible shape which private sector finance was in shortly after the war. It was certainly not very unexpected when the public responded poorly to the programme requiring long-term finance.⁶¹

It is a known fact that a private enterprise is in business with the principal aim of making money. Profit being the primary motive of a commercial enterprise, it is highly doubtful whether such an organisation can effectively provide all the requirements of a balanced community in the planning and development of new towns. This is because basic and essential aspects of town building like the provision of infrastructures and public services do not generate direct or immediate financial return. There are also other important issues such as overall planning and development control which are necessarily the responsibility of a public corporation. The area which poses more serious problems to private enterprise is the issue of land assembly and its disposal for development. In fact, even in the case of U.S.A. where the private sector is viewed as the sources of economic vitality through its generation of employment and payment

of property taxes, and as the most suitable agency for the planning and development of new communities, it was observed that:

It seems apparent to me that there are two distinct processes involved in urban development that are not always sufficiently distinguished. One is land development and the other is the development of buildings on the land. The development of land is, I think essentially a public action and I believe that most of the things we are doing in this respect in could be done by a local community corporation. In our own book-keeping and in our own management we keep entirely separate the functions of land development and disposition and the development of buildings above ground. The latter activity has to buy land from the land development company and pay an economic price for it. Looked at in this way, it is possible to envisage some form of community development corporation assembling land, using compulsory purchase powers, denied to private developers, which enables it overcome specific points of resistance where necessary extending water and sewerage utilities, putting in the roads and providing for open space, building the amenities in the basic land price. It then markets the land, specifically using private enterprise to subsidise the economic aspects by obtaining a higher price for the land enhanced by these amenities. They are thus built into the whole economic model.⁶²

The above quotation throws more light, not only on the inadequacies of private commercial enterprise as a sole agency for the planning and development of new urban communities, but also on the necessary distinction between the preparation of raw land for development and the process of construction on the land so prepared. It clearly shows that a public agency, with its corporate status and legal powers can assemble and acquire land in significant quantities and also plan, equip with appropriate infrastructure (roads, facilities and utilities) and distribute to public or even private enterprise for development, but within the framework of the public interest. On the other hand, a private corporation or organized commercial enterprise does not enjoy the same status. It has to purchase land from the land development company or from the open

market. The question of land supply is very crucial to the activities of all commercial ventures engaged in urban development. This is particularly essential because unavailability of land at a reasonable cost may be a major constraint on the capacity of these groups to meet urban development requirements.

Another important point we must address ourselves to is the inability of the private commercial enterprise to cater for the welfare of the low-income group in the urban area. The popular sector which accounts for the overwhelming majority of the urban population is made up of low and middle income groups who seek low-cost standard of development. Commercial developers on the other hand are more concerned with high development standard and money yielding projects.

Relating this discussion to Nigeria, we cannot find any history of commercial enterprises undertaking any major project of urban planning and development. This may be largely due to the fact that most people in Nigeria build their own houses through direct labour. Also when it comes to the development of housing and industrial estates the government finds it easier to engage a public corporation with all the necessary powers required for laying out plots, providing water, electricity, drainage and other utility services necessary for a planned urban community⁶³. If, for instance, private enterprises were to be given the sole responsibility for building a project as big and as important as Nigeria's new capital, it would invariably amount to asking a single foreign firm to plan and build the capital. This is because, considering the magnitude of the project, it is doubtful whether there can be any indigenous construction company in Nigeria that can mobilise the necessary resources and expertise required to implement the project.

Although one can argue that even now most of the major construction contracts in Abuja are being awarded to foreign firms, they are at least awarded by a public corporation (The Federal Capital Development Authority) implemented in accordance with the terms agreed by both parties and are being regularly supervised by officers of the Authority. Furthermore, such construction works are not in the hands of a single multi-national corporation.

This particular point, and indeed all the points that have so far been made, do not favour the appointment of a purely commercial corporation to undertake the delicate job of planning and development of new urban communities. This is, however, not overlooking the contribution the private sector can make in the overall growth and economic development of such urban communities. Our only contention is that to employ and rely entirely on the services of the private sector in the planning and development of new or old urban settlements would amount to assuming that the interests of the private sector are compatible with those of the communities. One acknowledges the potentialities of the private sector to contribute its own quota particularly in the areas of housing, commercial and industrial development within the new urban settlements. Also given their managerial skills and expertise as well as access to development finance the commercial developers would continue to play an expanding role in city growth and economic development. This should be the ideal role of the private sector in the process of urban development. But the moment a private or purely commercial enterprise goes into or engages in a full scale planning development and management of urban communities the disparity between business interests and community welfare will become very obvious.

LOCAL AUTHORITIES

Having discussed and highlighted some of the inadequacies of commercial or private sector as a suitable institution for the planning and development of new urban communities we may now proceed to consider the option of using the local authorities for the same purposes. It could be argued that there may be a number of local authorities that could be entrusted with the responsibility of planning and developing new urban communities. The first point that comes to mind here is finance. Finance is of paramount importance because the planning and developing of new urban settlement is a capital project, and all capital projects require financial strength. That is why it is most appropriate to start from a financial stand point.

While in places like Europe and America we may find a few local bodies that are likely to meet the financial burden of undertaking such a project, one cannot, by any stretch of the imagination, believe that there is a single local authority in the developing countries that can effectively finance a project of that magnitude. Some of the countries of the Third World, particularly in Africa, are so weak economically that even at national level capital projects such as the planning and development of new urban settlements are always running into financial problems.⁶⁴ Take for instance, the local government structure of most of these African countries which is inherited from the past colonial administration. By reason of the outmoded and fragmented character of this local governmental structure and the relation of its components to the respective central governments the majority of local authorities possess neither real statutory power nor the sources of revenue with which to undertake such a project. While

launching the new guidelines for local government reform in Nigeria in August 1976, Brigadier Musa Shehu Yar Adua had this to say:

..... Local Governments (in Nigeria) have, over the years, suffered from the continuous whittling down of their powers. The State governments have continued to encroach upon what would normally have been the exclusive preserves of local governments. Lack of adequate funds and appropriate Institutions had continued to make local governments ineffective and ineffectual. Moreover, the staffing arrangement to ensure a virile local government system had been inadequate. Excessive politicking had made even modest progress impossible. Consequently, there has been a divorce between the people and government institutions at their most basic levels.⁶⁵

This was the view of the Federal Government regarding the State of local governments in Nigeria. It may not be an exaggeration to say that this reflects the State of local governments in most countries of Africa. Professor Daudu also enumerated the problems of local governments in Nigeria prior to the advent of the reforms as comprising the following: limited revenue resources; inability to initiate and implement essential capital development projects due to lack of loanable funds; poor revenue collection resulting in late payments of grants from central governments; non viability of many local authorities particularly the small ones; inability to meet rising costs and increasing demands for improved services; and ineffective financial control and management generally arising from poor and inadequate staffing.⁶⁶

The issues raised by the new Federal Government guidelines and the points made by Professor Daudu regarding the local governments in Nigeria are only a pointer to the fact that apart from the financial incapability of these local governments to undertake projects such as the planning and development of new urban communities there are also

a number of political problems involved. For any agency to be appointed by the central government to undertake such a project, that agency must be that which can be directed and controlled by the central government. Control here does not imply lack of autonomy on the part of the agency. Instead it is that control which is necessary for effective coordination between two bodies that have a common goal and are genuinely committed to the cause of a given project. Looking at it from this stand-point, the local authorities are not agents of the central government. They are separate statutory bodies with defined areas of jurisdiction and they function largely in accordance with their various local political realities. A local authority may, before the project is completed, be of a different political party from the central government. In the event of this happening, a lot of complex issues come into focus. Issues like differences in policy priority and political ideology are bound to surface. These and other unforeseen complicated issues that may crop up do not auger well for any meaningful progress in the execution of such a project.

It is clear from the foregoing that local authorities are certainly not the ideal institutions for the purposes of planning and developing new urban settlement. The only option left to us now is an autonomous government sponsored and financed public corporation. We shall now proceed to examine how viable this public corporation can be as an instrument for effective urban development in comparison with the two institutions already discussed and in the end also highlight what should be the relationship of this public corporation with the two bodies discussed.

Urban Development Corporations

As an autonomous body with both moral and financial support from the central government an urban development corporation has all the potential for effective planning developing and managing new urban

settlements. The fact that it is a public corporation makes it much easier to assemble and acquire land for development purposes. It often has compulsory purchase powers which are necessary in view of the need to extend certain essential services to the community. Also such public corporations enjoy the support and confidence of the central government as opposed to a commercial enterprise whose activities may be viewed with some suspicion. There is also a regular flow of finance from the central government. Most importantly, these public corporations may have fewer petty political disputes as opposed to local authorities.

The local authorities have elected governments, and such democratic institutions have, as a matter of priority, their responsibilities to the local population that elected them into office and must cater for the welfare of the resident population before considering the plight of thousands of migrants. On the contrary, an urban development corporation, as an agency of the central government should be free from local political influence and as such remains the most appropriate body to take the task of building and managing new urban settlements. It is however important to note that such public corporations may face a number of problems particularly as regards their working relationship with other institutions.

A major problem which remains common to both Third World countries and the advanced world is the uneasy relation that exists between UDCs and local authorities within the area of jurisdiction of the UDCs. This trend of events is certainly counter productive and is, in our opinion, an area which requires urgent attention by any country or government wishing to establish special urban development corporations. Perhaps no case in Africa provides a better example of

this point than the uneasy relationship that existed between the Capital Development Authority in Dodoma, Tanzania and other various constituted authorities within the Dodoma Capital Development Area⁶⁷. Although we shall discuss this issue in greater detail in our chapter on the case study of the Capital Development Authority Dodoma, suffice it to say that squabbles between this particular urban development corporation and other organizations with similar powers and functions has led to personality clashes and unnecessary conflict at the expense of meaningful development⁶⁸. Also in the case of the British New Towns it was observed:

..... relations between the new town corporations and the urban district (or Borough) council are likely to require careful handling, even granted that there is goodwill on both sides, and unfortunately, goodwill has been the exception rather than the rule. The councillors are aware that the members of the corporation devote less of their time to the business of the new town than do the councillors; that the members are paid but councillors are not; the members are for the most part 'strangers from London', while the councillors are local residents; and that the members are nominated by a Minister while councillors are elected by ratepayers. The councillors would be rather more than human if they did not on occasion feel some measure of both envy and resentment.⁶⁹

From all available literature, the strained relations between these two organisations spreads over a wide spectrum of areas. It was noted that:

There have been clashes of personalities, differences of opinion, professional jealousies or disagreements, resentment of local councillors, fears that the role of elected representatives might be over shadowed or usurped and impatience by development corporations with local views or with criticism of their policy, planning and design. At times open hostility and downright obstruction has developed, with, in one case, demands to the Minister... that the development corporation should be abolished and the job of building the town handed over to the local authority.⁷⁰

It goes without saying that this state of affairs is not helpful to a balanced development. Unless both UDCS and the local authorities appreciate the need to liaise with one another and recognise the independence of one another, there will always be tension and too much time and money would be wasted without achieving much.

The foregoing discussion has shown that, even though the most appropriate agency for undertaking major urban planning and development is an autonomous government owned urban development corporation, such public corporations cannot operate free from legal and administrative problems. A particular problem worth mentioning here is that of jurisdictional conflict and relationship with other constituted authorities, particularly local authorities. It is our view that the solution to such problems does not rest on the goodwill of the two organisations. It certainly requires more than goodwill. What is needed is for the government establishing such urban development corporations to ensure that appropriate provisions are made in the laws establishing them which spell out clearly their powers, structures and limitations. We shall, in the chapters ahead, attempt to show how such problems can frustrate and indeed inhibit the successful execution of urban development projects.

We have attempted in this chapter to highlight some of the socio-economic problems posed by urbanization in both the advanced and the developing nations. Attempts were also made in this chapter to show how the capital cities, more than any other urban settlements, suffer most from rapid urbanization. It can also be seen that these problems were further compounded by the negative policies of the African countries where by economic activities and infrastructural services were concentrated in the capital cities. Now that some of

these countries have opted to shift their capital cities from their peripheral locations as one of the possible solutions to current urban problems we have in this chapter, identified an autonomous government owned urban development corporation as the most ideal agency for planning, developing and managing such new urban communities. We shall, in the chapters ahead, show how far these development corporations can cope with such a heavy responsibility. But before we go into specific case studies we may in the next chapter examine the place of land tenure and land acquisition in the process of urban development by these autonomous development corporations.

CHAPTER 2 - NOTES AND REFERENCES

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2. See HABITAT: U.N. Conference on Human Settlements, Global Review of Human Settlements, item 10 of the Provisional Agenda A/CONF 70/A/1 pp.16-47.
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27. Emrys Jones, Towns and Cities, Oxford University Press, 1966, p44. See also Charles Abrams, Man's Struggle for Shelter in an Urbanizing World, M.I.T. Press, Cambridge, 1964, pp.6-77.
28. See Guy Arnold, Modern Nigeria, London, Longman Group Limited, 1977. The three most prominent Nigerian tribes and their regions are discussed at Page vii of the Introduction to this book.
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39. This publication was reissued in the year 1902 under a new title: Garden cities of tomorrow, and reprinted in 1965 by Faber and Faber.
40. Schaffer, F., New Town Story, op. cit. p.4.
41. Osborn, F. J. Preface to Howard, E., Garden Cities of Tomorrow op. cit. p.12.

This Association had its name changed in 1909 to Town Planning Association following the adoption of public town planning under the 1909 Act as a result of the efforts of the Association in advocating for it. The Association later changed its name again in 1941 to Town and Country Planning Association. This name has been maintained till today. For a more detailed explanation of the transition of the Association, see Osborn, F. J.'s Preface to Ebenezer Howard's Garden Cities of Tomorrow, op. cit., p.16.
42. There is a little conflict among the authors regarding the exact date for the formation of this company. 1902 and 1903 are the dates on different publications. See Osborn, F. J.'s Preface to Ebenezer Howard's Garden Cities of Tomorrow, Ibid. p.12. Schaffer F. New Town Story, op. cit. p.4, and Osborn, F. J. Green Belt Cities, Evelyn, Adams, and Mackay Ltd., London, 1946, New Edition 1969, page 58.

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44. See Rodwin, Lloyd, British New Town Policy: Problems and implications (Harvard City Planning Studies, 16), Harvard University Press, 1956, p.12.
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CHAPTER THREE

THE PLACE OF LAND TENURE AND LAND ACQUISITION IN URBAN PLANNING
AND DEVELOPMENT

Although the subject of urban planning and development embraces a number of issues, the first and most fundamental problem facing both private and public developers is that of land acquisition. Land remains the most essential item not only for major industrial and commercial development projects but also for necessities such as housing and community facilities.¹ This is why we think that the issues that relate to availability of land, the method of acquisition and the price payable for its acquisition deserve more than a passing comment and have chosen to devote a whole chapter to such issues. It can be seen, from our discussion in the previous chapter, that government owned development corporations are increasingly being relied upon for the purposes of urban planning and development. Not only are these development corporations being used as instruments for building new urban communities but also they are increasingly becoming one of the most reliable vehicles for extending essential urban services to the newly created urban centres². The ability of these development corporations to assemble land for the sole purpose of orderly development of urban areas will therefore significantly determine their success or failure. It follows then that any law which determines the ownership, succession and disposition of this principal commodity for development - land - has considerable impact on development and deserves the attention of researchers in this area of study³.

In this chapter we shall examine briefly the land tenure systems

in the developing countries and the complex legal questions of land acquisition, the disposition of the acquired land and how this affect urban planning and development. The chapter is divided into three sections. Section A discusses the land tenure problems earlier mentioned and Section B explores and discusses methods of acquiring land by the urban development corporations. The third section ends the chapter by examining the important issue of compensation and other relevant issues.

SECTION A

LAND TENURE AND URBAN DEVELOPMENT

The relationship between land law and urban planning and development is crucial to our discussion. Crucial because, as already explained above, the land tenure affects the overall performance of the urban development corporations. We may begin by examining the land tenure laws that were in existence in the developing countries of Africa long before the colonial period and before the emergence of these autonomous government owned development corporations. But first of all what exactly do we mean by the term 'land tenure'?

The term 'land tenure' simply implies that land can be held. But 'tenure' has to do with the relationship between a person or a social group of persons and another in relation to land.⁴ Thus, that relationship existing between man and land and between man and man in relation to land can be considered in terms of rights and obligations. We may therefore say that the term 'land tenure' refers to the way in which people hold or own land, the rights that accrue from such holding or ownership and the obligations that arise therefrom.⁵

There are many different tribes occupying different locations within each of the countries of Africa and following different land tenure systems. Even within the same country, a place occupied by one tribe may show a slightly different land tenure system from another place occupied by another tribe.^{5A} Due to such a large number of tribes and variety of customs and traditions it would be extremely difficult to illustrate the nature and scope of each of the customary land tenure laws in colonial Africa. In Kenya alone, for instance, Ghai and McAuslan gave a list of about 29 major tribes.⁶ The fact that African Land tenure systems vary from community to community⁷ can therefore be largely attributable to the unique historical development of each political grouping and the consequent variation of legal and institutional structures in different polities. It is therefore important to note that the tribes mentioned in this chapter cannot be considered to be a full representation of all tribes in Africa. We have decided to cite them only because we think they provide interesting instances of African land tenure system.

CUSTOMARY LAND HOLDING

Ownership is the term mostly used for the relation between an interest and the person in whom it is vested. This is the sense in which a person is said to own a farm, a house or a tree on land not so owned by him. The question here is: does customary law recognise a concept of ownership in land? There have been conflicting views expressed as to the existence of a concept of ownership of land in African land tenure systems.⁸ The expression 'ownership' when used with references to land in Africa may convey different meanings

depending on the socio-political structure and customs of a particular community or ethnic group inhabiting a particular African soil.

Before the advent of colonialism there was, for instance, the land tenure which was to be found in regions of Africa that adopted communal ownership⁹. According to this land tenure, the land belonged to no individual but to the tribe, clan or the community in general. The chief or head of the community held the land in trust for the entire community. Thus, not even the chief could claim ownership of the land in his individual capacity.¹⁰ He was merely a trustee and a custodian of a property belonging to the community the leadership of which he enjoyed. What other members of the community had was only a mere right of occupancy. The sale or lease of such land could only be effected with the consent of the council of chiefs and elders. There is probably no better way of illustrating the nature and scope of communal ownership of land in Africa than recalling the celebrated words of Lord Haldane in the opinion he gave in the case of Amodu Tijani V Secretary, Southern Nigeria:¹¹

The next fact which is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case the chief or Headman of the community or village, or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build upon, goes to him for it. But the land so given still remains the property of the community or family. He cannot make any important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast and wherever we find, as in Lagos,

individual owners, this is again due to the introduction of English ideas. But the native idea still has a firm hold on the people, and in most cases, even in Lagos, land is held by the family. This is so even in cases of land purporting to be held under crown grants and English conveyances. The original grantee may have held as individual owner, but on his death all his family claim and interest is always recognised, and thus the land becomes again family land. My experience in Lagos leads me to the conclusion that except where land has been bought by the present owner there are very few natives who are individual owners of land.

The exposition above clearly points to the fact that communal or family land tenure represents the unit of land holding that was found in most parts of West Africa¹². It may also be important to add here that this case of Amodu Tijani has since become the locus classicus on the whole subject of Crown ownership of colonial lands¹³.

Like West Africa, the Eastern part of the continent was inhabited by many tribes with varying customs and traditions as well as organised institutions and constituted authorities long before the period of colonialism¹⁴. Similarly, there were different systems of land tenure that governed the relationships between man and his physical and spiritual environment in this part of Africa. Take, for instance, the customary land tenure which existed in the ancient kingdom of Buganda¹⁵ (now in the Republic of Uganda).

According to the land tenure law of the old Kingdom of Buganda, the head of State (known as Kabaka) was the owner of the land as a paramount king¹⁶ and he made grants to his notables and followers. All people who held land in the Kingdom did so at the Kabaka's pleasure¹⁷. The land holding itself was basically classified into three main categories. There was what was known as clan ownership; then there was the second category known as the official estates and finally there was the individual tenancy. Traditionally, the people

in the Kingdom were divided into clans with clan heads who were looked upon not only as elders and leaders but also as the custodians of the customs and traditions of their various clans. Apart from their various traditional functions these clan heads played the role of settling customary disputes and the determination of land and inheritance rights. Each clan had an area of land known as Butaka. Not even the clan head could unilaterally dispose of or alienate the land belonging to his clan.

The official estates system of tenure in the Kingdom was more or less feudal in form. There were chiefs under the Kabaka who were entitled to certain portions of land in their various areas of jurisdiction and such land were held ex-officio under the Kabaka's royal prerogative¹⁸. Then there was the third type of tenure which was mainly based on a personal claim arising through long occupation or the confirmation of holding them by the Kabaka or his agents.

The concept of land ownership among the various tribes of Tanzania in the pre-colonial period was also basically communal¹⁹. In most cases those holding land whether in groups or individually only had rights of user. This was in accordance with the ancient tribal principle that land, while used by individuals or group of people, is really owned by the community.²⁰ R. W. James quoted R.M. Northcote, Director of Lands and Mines (Tanganyika) as making the following observations in a Memorandum on Native Lands Tenure in 1945:²¹

The Bantu had no idea of a right of the land in itself, land was just there for cultivation and was in no sense a chattel. The general right over the land might be termed an usufructuary, occupational, agricultural right, and heritable. A man had security of tenure as long as he behaved himself and obeyed the chief and, if the land was agricultural, kept it under cultivation.... Allocation of

the lands was in the hands of the headmen, elders, clan heads or chiefs.... The land was there for the community and no one could use it to the detriment of the community... In other words the right of the community or the general good was overriding. Subject to the above the right was a perpetual one, or put another way, non-terminable, except by action or non-action on the part of the occupier.²²

This form of land holding was also recognised by the court in the case of Muhena bin Said V the Registrar of Titles and Another²³ concerning land at Mwanza. Graham Paul, C. J. Tanganyika declared:

The only material customary law affecting this land or rights to or over this land clearly was that of the aboriginal tribe and I am certainly not persuaded that this custom of the aboriginal tribe had any such conception as the ownership of land by an individual in fee simple freehold. Indeed I am satisfied that such a conception was entirely unknown to the tribe.²⁴

What this argument and other situations examined above substantiate is the fact that African customary law of tenure has no conception of land holding comparable to the English idea of a fee simple absolute in possession²⁵. However, while much of the customary land law in Africa does not recognise sole ownership of land by an individual, it does uphold and recognise the usufructuary interest vested in the individual who occupies a piece of land. It is important to note that, notwithstanding this general concept of ownership of land in Africa, there were few tribes that recognised for many years individual rights to land. Such tribes have a very strong sense of private property.

Take, for instance, the Kikuyu tribe in Kenya. The Kikuyu tribe is patrilineal²⁶. Any member of this tribe may marry as many wives as he can support.²⁷ The family group - composed of a man, his wife or wives, children, grand-children and great-grand-children is called the Mbari²⁸. This is the largest local kinship group formed on the

basis of common descent from a single male.²⁹ The Mbari must not be confused with the clan. As far as the Kikuyu are concerned, the clan (called Moherega) is made up of several mbari who have the same clan name and are believed to be descendents of one mbari from the past³⁰.

The Kikuyu are basically agriculturists and attach great importance to the land. According to Kenyatta the land law that developed among the Kikuyu was intended to ensure that an individual or a family group (i.e. the mbari) peacefully settles on the land he or it possesses³¹. Under the customary land law, every family unit has a right of one form or another to land. While the tribe would collectively defend the boundaries of its land, every inch of land has its owner (whether an individual or a mbari). When talking to a stranger the land may be referred to as 'our land' to show tribal unity. But the fact is that every inch of the land has its owner with fixed boundaries.³²

There are basically three methods of acquiring land among the Kikuyu. Land can be acquired through initial clearance of forest land, purchase or inheritance. The original method used to acquire land was by clearing virgin land in the forest. Due to the shifting cultivation that was practised by this tribe the rights acquired through this method were not permanent.³³ With population growth land became scarce and when eventually no more forest land was available shifting cultivation gradually ceased and cultivation became permanent together with the rights in the land. A stage was then reached where it became common to refer to the particular land on which a family was settled as belonging to that family group.³⁴ This land belonging to the family group would then be well defined and clearly identifiable.³⁵

A man holding land through purchase or inheritance among the Kikuyu can sell it or give it to another person; he is however required by the custom to consult the elders of the village who act as ceremonial witnesses in land transactions.³⁶ It is important to note that in the older days this right of sale was restricted in some cases. For example, a man who had many sons could not sell his land without consulting the sons. In such a case the elders of a village could intervene for the general welfare of the children concerned.³⁷ Also it was uncommon for any one to sell his land to a person who was not a close relative or a Kikuyu himself³⁸.

The power to decide land disputes among the Kikuyu is vested in the council of elders³⁹. One important point worth mentioning here is the fact that, the Kikuyu customary law does not give the chief or village head any power over land. That is to say, apart from the land belonging to his own family group, the chief does not allocate land to anybody or exercises power over land belonging to another person or family group. When he (the chief) sits with other elders to settle land disputes he does so only in his capacity as an elder not as a recognised paramount chief with ultimate power over land⁴⁰.

We have attempted to discuss the subject of land ownership at some length because we think it is important to show the nature of the customary tenure that was generally recognised by the native tribes of Africa. From the foregoing discussion, it can be seen that even though different types of customary land tenure systems existed in the pre-colonial Africa, the inhabitants of this continent, with few exceptions, like the Kikuyu tribe in Kenya, had common attitudes as far as land was concerned. In this part of the world land was regarded as a communal property and the chiefs and clan heads as

custodians and trustees of the land on behalf of the community. It may be relevant here to quote an interesting statement which a Nigerian chief is reported to have made to the West African Lands Committee as far back as 1912:

I conceive that land belongs to a vast family of which many are dead, few are living, and countless members are yet unborn.⁴¹

Also in an old East African case, Gwanobi and others V Alidina Visram⁴² the members of an African tribe argued,

The land belongs to God, and cannot be sold either by an individual or by elders of a tribe, and the right to use the land is common to all members of the tribe. On the other hand individual ownership is recognised in the results of an individual's labours on the land. That is to say, he can sell trees planted or inherited by himself and he can sell the right to make use of a clearing prepared by him for the cultivation of short crops, but in neither case can he convey any title to the ground on which they stand or which has been cleared for cultivation.

The above clearly reflects the position of land holding in Africa long before the period of colonialism. We may examine briefly this indigenous African land tenure in relation to urban development.

CUSTOMARY LAND TENURE AND URBAN DEVELOPMENT

There is no doubt that the rules of customary land tenure discussed above raise a number of issues regarding urban planning and development. First and foremost, given the nature of customary tenure rules, did they offer any incentive to the African farmers to develop their lands which they did not own as individuals? In other words, did the ordinary man have any rights to the exclusive use of a

particular piece of land to his own benefit? In order to answer this question we may examine in detail the concept of communal ownership in relation to the rights of an individual.

Lewis⁴³ has distinguished three types of 'communal' land tenure as" (a) where people use the same land for individual benefit, (b) where people use the same land and pool the proceeds, and (c) where each person has rights to the exclusive use of a particular piece of land for his own benefit subject to rules that prevent him from selling or disposing of the piece of land".

From our discussion on the customary land tenure of various tribes so far it can be seen that individuals or nuclear families have rights to the exclusive use of land for cultivation and of proceeds from that cultivation. This type of customary land tenure is the same as the one classified under group (c) by Lewis. The second category of Lewis' classification does not seem to appear among the tribes we examined above. But type (a) can be found in the case of grazing land where the people do not have exclusive grazing rights or in the case of unallocated land to which any member of a tribe can go and collect firewood or fruit. But even in the case of grazing land, in some tribes, it is known that if a person invests in communal grazing land and the investment significantly improves the land such a person acquires exclusive rights to the use of that land.⁴⁴ Thus, when one considers the ordinary farmer in Africa who works from morning to evening on his farm and harvests enough to feed himself and his family for the next one year and possibly sells the surplus, it would be wrong to conclude that such a farmer has no individual incentive to use his land properly. The land on which he cultivates may in principle belong to the community as a whole but a person can own the

plants which he has grown and the house or other structure erected on his allotment, while the ultimate title to the land itself remains in the owning community.⁴⁵ Thus, the ordinary occupier of a piece of land has all the necessary incentives to develop the land either as agricultural land or dwelling house. However, the importance of land in post colonial Africa goes beyond its agricultural use, especially in a period of rapid urbanization and economic growth as already indicated in the previous chapter. But before discussing customary land tenure and its relation to urban development, let us examine the introduction of private land tenure in Africa and its main characteristics as distinguished from the customary rules of tenure:

PRIVATE LAND TENURE

It was the advent of the colonial rule which brought the introduction of a Western concept of property in many countries of Africa.⁴⁶ The inevitable result of this new development was the co-existence of these two different land rights.⁴⁷ The sudden change in these African countries from the old subsistence economy to the new modern cash economy simply meant higher demand for land by both individual members of the tribal groups or community and the various governments that needed land for public utility and other infrastructural provisions.⁴⁸

Perhaps the first question that arises in any comparative analysis of the customary rules of tenure in Africa and rules of tenure under the English common law is what exactly is meant by the term ownership? Commenting on the need for a definition Simpson observed:

The idea of ownership is in fact simple and intelligible to any human being anywhere... Even where land is concerned 'ownership' (or absolute ownership) seems to be regarded by writers on the subject as an ordinary expression in plain English which for their purpose does not require special definition or explanation.⁴⁹

But as Allott replied, there is no reason why, if a word like 'ownership' has a plain and obvious meaning, it cannot or should not be defined. A word is either imprecise, in which case it requires some definition; or it is precise, in which case a definition is both possible and useful.⁵⁰

Also in trying to analyse what is meant by ownership Honore elaborates on what he calls the 'liberal' concept of ownership.⁵¹ While giving an account of the standard incidents that accompany ownership, he defines ownership as 'the greatest possible interest in a thing which a mature system of law recognises'. According to the legal incidents which are common to these 'mature legal systems', the 'owner' can use, stop others from using the land, sell or leave it by will.⁵² No other person has an interest in the land or thing owned of the same nature or superiority as the owner. He noted that:

Ownership comprises the right to possess, the right to use, the right to manage, the right to the income of the thing, the right to the capital, the right to the capital, the right to security, the rights or incidents of transmissibility and the absence of term, the prohibition of harmful use, liability to execution and the incident of residuary. This makes eleven leading incidents...⁵³

Taking some of these incidents individually, it can be seen that the right to possess simply means the right to have exclusive physical control of a thing, or to have such control as the nature of the thing permits. This is the foundation upon which the concept of ownership

in private land tenure rests.⁵⁴ The term 'use' refers to the owner's personal use and enjoyment of the thing that is owned. The right to manage means the right to decide how and by whom the thing shall be used.⁵⁵

The right to the capital consists of the power to alienate the thing and the liberty to consume waste or destroy the thing or part of it.⁵⁶ Also the right to security implies that the owner should be able to remain owner indefinitely if he so chooses and remains solvent. If he does not remain solvent, then he is liable to execution - i.e. the thing may be taken away from him for his debt. Finally, absence of a term implies that there should be no time limits to the interests of the owner in a thing.

Such are the incidents of ownership under private land tenure. From the ownership of land in English common law emanates the right to alienate it and this right more profoundly distinguishes private land tenure and customary land tenure.

As earlier indicated, the advent of colonialism brought about the introduction of a Western concept of property in many parts of Africa, which resulted in a dual system of land rights. 'Conveyances' patterned after the English legal system were drawn up to mark transactions which were to be registerable with the government, but acquisition of land through this process did not ameliorate urban land problems.⁵⁷ While the urban explosion was making land for development more scarce, extensive areas were in the hands of various families and communities. The increasing rate of urbanization brought about an urgent need for the conversion of rural land to an urban use but unfortunately both private and public developers were finding it increasingly difficult to acquire land due to the dual nature of the land tenure system and lack of effective land policies. A United

Nations publication noted that:

Several reasons make it imperative for African countries to adopt urban land policies. First, with cities growing at the fastest rates ever recorded in the present century, the scramble for urban land among various competing land uses has intensified. This scramble is giving rise to poor land management, misuse and abuse of land. Indeed, the scramble would not be necessary if there were an urban land market to regulate land distribution. The structure of land markets, however, is burdened with customary land-holding practices, urban land prices have been so inflated that over fifty percent of urban families cannot afford to buy plots, let alone shelters. No doubt, there is no easy way to regulate the urban land and to control land use without an urban land policy.⁵⁸

The above quotation points to the fact that even though the developing countries may be experiencing a tremendous increase in the rate of urbanization the existence of customary rules of tenure plays a major role in land use problems. We share this view to the extent that, under the customary land tenure, the village or community constitutes the property owning group. This simply means that the rights of these groups are considered far superior to those of individuals. It also follows that a person who is not a member by birth of a village is, to a great extent, excluded from land rights in that village. Thus, it would be impossible for an individual member of a community to acquire a piece of land elsewhere for the purposes of urban development. In other words, the customary tenure rules confine members of tribal or family groups to their specific family land without affording them the opportunity to keep pace with the new economic system by way of moving to newly created urban centres and acquiring land for development purposes. In fact, due to the excessive concentration of ownership of land under customary law, some families may lay claim to a very extensive tract of land making it

impossible to move people from an over-crowded tribal area because that would amount to encroaching on land belonging to such families or tribes. There have been similar criticisms against customary land tenure particularly in the context of achieving economic development in Africa.⁵⁹ We may examine some of these arguments with particular emphasis on their relation to urban development.

ARGUMENTS AGAINST CUSTOMARY LAND TENURE

One of the most prominent features of the customary rules of tenure that is often cited as a constraint on economic development is its inability to facilitate the raising of capital through mortgages.⁶⁰ The crux of this argument is the fact that, since customary land tenure does not permit individual ownership, an occupier of land is incapacitated from mortgaging that land. This inability to raise loans may restrict investment capacity and therefore restrict the supply of necessary funds for urban development.

This argument may, in theory, be true, but in practical terms we are of the view that the criticism against customary law is being stretched too far. This is because, to criticize customary land law in this way seems to proceed from an assumption that the financial institutions that offer credit facilities for either agricultural or urban development exist in many parts of the developing countries of Africa and that the urban poor have access to them. The simple truth is that there are just very few such financial institutions and they cater only for a tiny fraction of urban housing need. To all intents and purposes their policies are meant to confine credit facilities to

the urban elite rather than extending it to the majority of urban poor.⁶¹ In fact, even if such financial institutions were available everywhere and the customary rules of tenure were to permit individual ownership and the raising of capital through mortgages we do not envisage the ordinary land owner to be in a secure position. Take, for instance, where individualised landholding is introduced and Mr. A mortgages or sells his land in order to raise funds for development purposes. There is a strong possibility on the part of Mr A, who might have never handled such amount of money in his life, to get carried away and use the money to marry more wives, or in some careless manner. After just a year or two Mr A is left with no money. The only alternative for him is to migrate to the city as a landless peasant in search of a job with no skill or formal training in any profession.

It can be seen that the argument that customary land tenure does not encourage credit and investment in economic development is largely based on the supposed fact that there is no ownership of land in customary land tenure. The fact of lack of ownership of land is itself deduced from the fact that in the customary land tenure system, various restrictions are imposed as to the alienation of land. But it was observed that:

There is no doubt that types of customary land rights have emerged which do involve the right of disposal, in others such rights do not exist.... It does seem arbitrary to use alienability as a test for the existence of ownership... The land cannot be said to belong less to some one because he or they are unable to part with it. The right to exclude others from occupation and use of the land, rather than the right to alienate would seem to be the most appropriate test for determining the question of ownership...⁶²

Fragmentation is yet another element of customary landholding that has been subjected to criticism as an obstacle to economic development. The term fragmentation when used in relation to land simply refers to the detachment, isolation or separation of parcels or plots of land belonging to one person or group of persons.⁶³ The point of argument here is the fact that the process of fragmentation may result in the subdivision of land into many undersized units which are unfit for any rational exploitation or meaningful development.⁶⁴

Considering the magnitude of modern economic development, one can subscribe to the view that having a large number of small fragmented landholdings in the traditional sense may not facilitate proper urban planning and development. This type of fragmentation which has its origin in the traditional farm layout may have been justifiable in the olden days, but with increasing population the original parcels have to be further subdivided to accommodate new family or community members. This simply means that there will be greater demand for land than its supply.

However, it can be argued that the customary rules of tenure ensure that every adult member of the community has a right to some piece of land for cultivation or for residential use. This contrasts with the private land tenure system whereby due to private ownership of land some adult members of the society may find themselves without any piece of land. If one accepts that inequality in the ownership of the means of production is one aspect of promoting uneven development then one would not be wrong to suggest that the customary land tenure expresses an element of equality.

The general implication of the arguments against customary land tenure, especially when made in comparison with private land tenure, is

that customary land tenure should be changed into private land tenure in order to facilitate greater economic development. Much may depend on how well one argues one's points. There is however the need, from our discussion so far, on the part of the constituted authorities in the developing countries of Africa to intervene in the prevailing pattern of land ownership, control and usage in order to streamline landholding procedures, improve land productivity and ensure that developers of various categories do not suffer in their quest for urban land. It is our view that, it is almost impossible to achieve effective planning without adequate control on the use and ownership of land. In other words, considering the critical importance of land as a major tool for urban planning and development, the governments in Africa must play a major role to increase the supply of land for future public uses and development purposes. The main goal of the government in this regard should be the achievement of a greater equity in land distribution and ownership. From our discussion in chapter two and this section it can be seen that public authorities require land on increasing scale for various development schemes. This overriding social function of land usage does, in our view, justify governmental control on the use and ownership of land. The crucial issue therefore is that of accessibility on the part of the public authorities to urban land.

We may now go to the next section where we shall examine the methods of land acquisition by the public authorities for the purposes of development projects and to what extent these methods of acquisition affect individual rights in land.

SECTION B

LAND ACQUISITION

There is no doubt that in virtually all African countries the governments have rapid economic development as one of their topmost national priorities. Although there are various ways and means of achieving this goal, a lot is being done by way of channelling human and material resources into infrastructural projects and other productive activities conducive to economic growth. To this end, urban development corporations are engaged in the execution of ambitious programmes of public investment in urban development on state, regional and nationwide bases.⁶⁵ The successful implementation of urban development of this magnitude will therefore depend almost entirely on the ability of these corporations to acquire land.⁶⁶ But due to the land tenure systems in these countries, as discussed in Section A, these development corporations are finding it increasingly difficult to assemble land. In their efforts to provide urban facilities and services such as water supply, electricity, housing estates, roads and educational institutions, the governments and their agencies find themselves encroaching upon private rights in land. The fact that the authorities do not possess sufficient land and the fact that the services to be rendered are basic and essential to the whole society may explain why governments and their agencies use various methods to expropriate land for the purposes of encouraging orderly development of urban areas.

While the above may throw some light on why private property rights and interests in land, which have vested over the years through customary grants of rights and other forms of tenure, will

occasionally have to give way for the establishment and management of certain essential infrastructural and utility services, we may proceed to examine in greater detail the rationale behind the laws which empower these public authorities to acquire land compulsorily for public purposes, the procedure being followed in the process of such acquisition and the management and development of the land so acquired.

There are basically two methods of acquiring land by public authorities. Lands are either acquired through the normal day to day purchase in the open market or through the use of compulsory acquisition powers. It appears however that most public authorities prefer to use the compulsory acquisition powers than to buy land from an open market.⁶⁷ Many reasons may be advanced to justify such preference. High cost of land is the most obvious obstacle on the part of public authorities to participate in an open market negotiation. The clouded and virtually unmarketable land titles resulting from the customary land tenure system is yet another inhibiting factor on the part of most public authorities that may want to go for an outright purchase of land in the open market. The most common and powerful method of land acquisition being used by these public authorities is therefore the use of compulsory acquisition powers. We may now examine these powers and their limitations.

COMPULSORY ACQUISITION

The power of compulsory acquisition is otherwise known as the doctrine of eminent domain.⁶⁸ The doctrine of eminent domain was defined as:

The right of the state, through its regular organisation, to reassert, either temporarily or permanently, its domain over any portion of the soil of the state on account of the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorise the appropriation of the same to public purposes, such as the opening of roads, construction of defenses or providing channels for trade or travel⁶⁹.

Acquisition of land in the interest of public utility, or expropriation, is not a new procedure either in the advanced or the developing countries.⁷⁰ This doctrine is universally accepted by modern states with only few variations in the manner different states use it and the exact extent of the 'public purpose' for which it is used.⁷¹ In fact, despite the emphasis being placed upon the communal nature of customary land tenure systems in the traditional African Society, many pre-colonial African states apparently recognised private rights over land, though different from those rights recognized by the Western World.⁷² Though land, under customary law, was owned by a family, community or organized groups, the group did recognise in favour of its members private rights, which must be extinguished through eminent domain when there was a conflict between an individual and the community on plans for the use of such land. Umeh states that according to pre-colonial land law a person could lose his land because it was required by the community for purposes such as a public square, a well or a place of worship.⁷³ Whatever was the position of power of eminent domain in pre-colonial Africa, this was largely superseded by the new concept of property law introduced by the colonial masters. No sooner had the Europeans established themselves as sovereign than they introduced new legislation based on European experience. As early

as 1876 the Gold Coast (now Ghana) had "an Ordinance regulating the acquisition and vesting of lands for the public service" which was used by the Crown for the compulsory acquisition of land.⁷⁴ There was also the Indian Land Acquisition Act of 1894 which was used in East Africa as early as 1899⁷⁵. Similarly the Southern Nigerian Public Lands Ordinance of 1903 had provisions on compulsory acquisition.⁷⁶

As a result of these colonial developments, many African countries inherited, upon independence, eminent domain legislation with broad powers given to the governments and their agencies to compulsorily acquire land for public purposes.

Many arguments can be advanced for or against the application of this doctrine. One of the arguments against this doctrine is the fact that it tends to affect the guarantee of security of tenure or of title in land and may consequently discourage individuals from acquiring and investing in private lands because of the knowledge that the government or its agencies may at any given moment decide to acquire the land compulsorily. Thus, the application of this doctrine may adversely affect the potentials and capabilities of private citizens to contribute their own quota to the physical development of the urban and rural environment.

On the other hand, it could equally be argued that, the incompetence or inadequacy of the land markets to make available the land badly needed by governments and their agencies at reasonable prices justifies the imposition of limitations on private rights by way of compulsory acquisition. However, regardless of the line of argument one chooses to follow, we are of the view that, land is one of mankind's most basic resources and as such the need for a policy

governing its use, ownership and distribution is unquestioned. But of equal importance is the nature and scope of such policy. In other words, the formulation and implementation of any policy that seeks to permit physical invasion of a private property demand extreme care. This necessarily brings us to an examination of the catch-phrase "public purpose". The breadth and vagueness of the term 'public purpose' remains one of the most vexing problems in cases of compulsory acquisition

PUBLIC PURPOSE - ITS MEANING AND LIMITATIONS

The Public Lands Ordinance of 1876 of the Gold Coast colony earlier cited merely restricted compulsory acquisition to lands required for "the public service"⁷⁷ but before the end of the century compulsory acquisition statutes began to enumerate various other purposes which would be deemed to be public. Also the Indian land Acquisition Act of 1894, earlier referred to and used in East Africa, included as a "public purpose" the provision in certain circumstances of village sites⁷⁸ and gave companies the benefit of compulsory acquisition if government officials were satisfied that acquisition was necessary for the construction of a work "likely to prove useful to the public".⁷⁹ In Nigeria too the Southern Nigerian Public Lands Ordinance of 1903 defined public purposes simply as "for exclusive Government use or for general public use",⁸⁰ but the subsequent legislation on this matter, the Public Lands Acquisition Ordinance of 1917 included in the definition of public purposes provisions for new townships, carrying out mining activity, and obtaining control of land contiguous to a port or area whose value would be enhanced by a road, railway or other public work.⁸¹

It can be seen from all the eminent domain statutes cited above that the powers of the state were becoming broader with each new set of compulsory acquisition law. The most important question we need to address our minds to at this point is whether or not there is the need to re-examine the scope of the declared 'public purpose' particularly in the developing countries where such public purposes may vary from purely planning and development notions to political, economic and social reasons. We may begin by examining the situation in Tanzania.

The colonial Tanganyikan Land Acquisition Ordinance of 1926⁸², like the Nigerian Lands Acquisition Ordinance of 1917, did not provide simply a general "public purpose" formula, but enumerated the following public purposes:⁸³

- (a) for exclusive Government use, for the use of the "native inhabitants" of the Territory or for general public use;
- (b) for or in connection with sanitary improvements of any kind;
- (c) for or in connection with the laying out of any new township or Government station or the extension or improvement thereof;
- (d) for obtaining control over land contiguous to any port;
- (e) for obtaining control over land required for or in connection with mining or oil mining purposes; or
- (f) for obtaining control over land required for or in connection with the construction of any work to be carried out by a company and officially declared to be a public purpose.⁸⁴

As earlier mentioned, many African countries inherited, upon independence, compulsory acquisition legislation with broad powers given to the government and their agencies to acquire land compulsorily for the purposes of establishing and managing various development schemes. The post colonial policies of many independent countries in Africa meant that the State required more power to use the doctrine of eminent domain in order to acquire land for all kinds of industrial, agricultural, commercial and social development projects. The changes that took place in the law of eminent domain in Tanzania in the years 1965 and 1967⁸⁵ clearly reflect the need on the part of most modern African Governments seeking rapid economic development not only to have compulsory acquisition powers but also to effect changes in the law each time they contemplate putting such powers to a new use.

For instance, the definition of public purpose inherited by Tanzania upon its independence made no reference to the use of the power of compulsory acquisition to acquire land for housing projects. So when a new legislation providing for such project was enacted in 1965 it became necessary to enlarge the definition of 'public purpose'. Thus in lieu of provision (a) of the 1926 colonial ordinance cited above, it was provided that a public purpose exists if the land is acquired "for exclusive Government use, for general public use, for any Government scheme for the development of agricultural land, or for the provision of sites for industrial or commercial development social services or housing"⁸⁶ Similarly, when the Land Acquisition Ordinance of 1926, as amended, was repealed and replaced by a new Land Acquisition Act in 1967⁸⁷ the definition of a public purpose was further expanded: "any government scheme for

the development of agricultural land" was changed to read "any government scheme" and "the development of agricultural land"; Also "the provision of sites for industrial, agricultural or commercial development"; and "construction of works of public utility" became "Construction of any work ... of public utility or in the public interest, or in the interest of the national economy".⁸⁸

The foregoing discussion clearly shows how broad the powers of the governments and their agencies are when it comes to the issue of acquiring private land for 'public purpose'. We are of the view that unless and until the declared public purposes are very clearly spelt out the land owners in the developing countries will forever remain in the dark as to the actual reason why their lands are being compulsorily acquired. Failure on the part of the acquiring bodies to state in unambiguous terms the reasons behind such acquisition and the projects or schemes intended on the land can only antagonise the land owners who may be completely ignorant of the good intentions of the government. The enabling legislation should therefore define fully the public purposes that are applicable as well as the limit of their applicability.

Apart from the fact that enumerating the public purposes for which the land may be acquired serves an educational function, it could serve as a limitation on the eminent domain power of the state. In other words, when the statutes are clear and precise as to the scope of the eminent domain powers and their limits the courts will be placed in a better position to invalidate any attempt by an acquiring body to acquire land in a manner that is inconsistent with the provisions of the law. This clarity and precision on the part of the law is fundamental because it is not uncommon to find governments

or their agencies exercising powers of compulsory acquisition for a purpose other than a public purpose. Take, for instance, the Nigerian case of Chief Commissioner, Eastern Provinces V Ononye and five others,⁸⁹ where the court held that the compulsory acquisition of land for the purpose of granting a lease thereof to a commercial company was not a public purpose within the meaning of the Public Lands Acquisition Ordinance.

It was also reported by a Ghanaian Constitutional Commission in 1968 that during the Nkrumah regime compulsory acquisition powers were used to benefit particular "favoured personalities"⁹⁰. In order to control the abuse of such discretionary powers by highly placed government officials the commission recommended that the public purpose should always be clearly stated and its limits equally provided.⁹¹

Another point worth considering here is whether it would be appropriate to emphasise the application of public purpose limitation in Africa considering the need for most African governments to use compulsory acquisition powers with a view to stimulating rapid economic development. Thus, it could be argued that, while one cannot ignore the need to control administrative corruption and abuse of discretionary powers, if the public purpose limitation is very narrowly defined it may eventually prevent innovative use of eminent domain power as a tool for development. One is also inclined to believe that, considering the degree of socio-economic transformation that the African continent is going through, there may be the need to compulsorily acquire land for projects which are productive but which may not pass the 'public purpose' test in the traditional sense of that phrase. Thus if we are to restrict the use

of power of eminent domain to traditional state activities - such as Defence, Highways, and Education - the modern African government seeking rapid economic development in all spheres of life may find great difficulty in achieving its goal.

Perhaps no where provides a better example of how common notions of public purpose can clash with a nation's development needs than the use of compulsory acquisition powers in Ethiopia to acquire a centrally located tract of land to build a luxury tourist hotel in the capital for long term lease to the Hilton Hotel chain.⁹² The acquiring authority here was the state owned Development and Hotel Company of Addis Ababa. Though none of the displaced landowners brought an action challenging this acquisition, some observers were of the view that no public purpose was served by this particular compulsory acquisition. Their main argument here was that, since those who would operate the hotel were going to do so as private entrepreneurs they ought to have been made to buy the land from an open market.⁹³

Taking the Ethiopian issue as a test case, one can see that if the land in question were required for a highway or educational institution the state might unquestionably use its power of eminent domain without generating criticism from many quarters. However, we believe that the new hotel is vital to an expanding tourist industry, which in turn is important for the overall growth of the country's economy. Not only in Ethiopia, but also in all the developing countries of the Third World expanded tourism could be an important tool for earning the additional foreign exchange badly needed to support various development schemes. It may be interesting to note that at the time the Development and Hotel Company of Ethiopia

acquired that land the national development plan in force had a provision to the effect that "the Government should take the initiative in building hotels in Addis Ababa, as well as in several other places, which are important either as centres of economic development or of special value for the development of tourism".⁹⁴

There is no doubt that the case of Ethiopia cited above reflects the current relationship between the State's power of eminent domain and the development process in Africa. While abuse of discretion by government officials in particular instances justifies the public purpose limitation, the socio-economic circumstances of an African state may make a public purpose limitation unnecessary. It is our view that the interest of the private landowner can be protected and the developmental need of the state met if adequate judicial review by an independent judiciary is permitted by compulsory acquisition laws. Such laws should contain a clause which provides for an appellate body to whom an appeal by any dispossessed may lie. Apart from giving the dispossessed the opportunity to challenge the acquisition this will create a forum for articulating and examining the public purpose as well as educating the entire public on the need to surrender their land when genuinely required by government for development project which will in the long run benefit the whole community. It is however important to note that with the changing circumstances in the socio-economic need of the African countries lawyers representing land owners may be tempted to challenge the public purpose of new and different kinds of development projects for which land may be acquired. When such challenges are too frequent they may delay the implementation of major urban development projects that are fully justifiable in terms of the nation's needs. This point

necessarily raises the issue of the procedure being used in the exercise of compulsory acquisition powers by governments and their agencies and how such procedure affects easy access to land and protects the interest of the dispossessed. We may now touch briefly on the procedure for compulsorily acquiring land by public authorities.

COMPULSORY ACQUISITION PROCEDURE

The procedure used in the process of compulsorily acquiring land can facilitate or frustrate development efforts. The procedure being followed in most post-Independence African countries is that which requires a considerable number of steps before land could be taken by eminent domain.⁹⁵ This makes the whole process of acquisition cumbersome and time-consuming. In fact some statutes required that the land be registered before the acquisition was carried out.⁹⁶ This system was also one of the recommendations made by the East Africa Royal Commission.⁹⁷ Also referring to the procedure in compulsory acquisition in Nigeria Oluwatudimu had this to say:

There is no doubt whatever that the present procedure in compulsory acquisition and compensation imports, for the affected members of the public, a lot of unnecessary uncertainties, anxieties and hardships and indeed some injustice.⁹⁸

All enabling statutes authorising public authorities to acquire land compulsorily lay down important procedures for the protection of the land owner. We may examine such provisions briefly.

Section 4(1) of Public Lands Acquisition Law Cap. 167 laws of Nigeria gives the acquiring authority the power to enter upon the land so required in order to make such preliminary investigations as are

necessary in connection with the acquisition but only after the landowner or the occupier has been given at least seven days notice and his consent duly obtained. Similarly, in the event of the authorities making up their mind that they require the land for a particular scheme, the law provides that the authorities have the obligation to serve notice of intention to acquire the lands on the person interested or claiming to be interested in such lands specifying a period not less than six weeks within which the owner must yield up possession of the land.⁹⁹ The law also requires the publication of all such notices at least once in the appropriate Gazette the notices having been properly served.¹⁰⁰

There are also procedural provisions meant to protect the acquiring authorities from land owners who may deliberately refuse to cooperate. These include: (1) the right to go to the appropriate High Court for the settlement of compensation or disputed interest or title if for six weeks after the service and publication of notice of intention to acquire the land (a) no claim was lodged with the authority or (b) the claimant and the authority fail to agree on the amount of compensation or (c) the claimant cannot give any satisfactory evidence in support of his claim or (d) where the authority receives separate and conflicting claims in respect of the same land.¹⁰¹

From the few points of procedure enumerated above, it can be seen that the land owner is placed in a weaker position. Take, for instance, the time allowed for claims to be made. Six weeks, in our opinion, is too short a period within which the land owners should prepare and submit their claim. This is mainly because some of the property owners may be absentee landlords. Also the requirement that

notice of intention to acquire land be published in an official Gazette is, to our mind, inadequate. Considering the low level of literacy in Africa, we are of the opinion that the acquiring authorities need to use some extra means of communication so as to ensure that the property owners are fully aware of the government's intention to acquire the land. No amount of publicity of serving a notice of acquisition is too much since that is the only way such notices can come to the knowledge of all interested parties. Failure to give adequate publicity to this vital information may lead to untold hardship and in some cases outright injustice. In the case of Nigeria it was observed:

The Public Lands Acquisition Act provides for publication in the Gazette and for service of the notice to affected owners by post or by pasting the notice on their lands. Firstly, very few read the Gazette outside the civil service. Secondly, there are absentee landlords. If the land is not developed the notice is stuck on trees in the bush, so nobody is aware of it.¹⁰²

All said and done, the procedure to be used in compulsory acquisition should, in our view, be that which enhances the prospects of the authorities taking possession of the property as early as possible but at the same time protects those whose property is expropriated. Considering the process of accelerated urbanization and rapid economic growth nothing can be more desirable than policies that will help governments and their agencies to guide this transition into desired channels. One of such policies is the procedure that is simple, straightforward and capable of ensuring that acquired property vests in the government within such a time that the project for which the property is needed can proceed without delay.

Before we end our discussion in this section of the chapter it may be relevant to highlight another method of ensuring that public authorities have access to land at all times. One of the most effective measures being used to control land is the creation of public land banks by the acquiring authorities.¹⁰³

LAND BANKING

Apart from the use of compulsory acquisition powers there has been a number of attempts by governments and their agencies to participate directly in the land market so as to ensure that the land requirements of all user groups, particularly low income group, are met. This and many other social equity goals brought about the concept of land banking.¹⁰⁴ Though strictly speaking, landbanking is not a method of acquiring land like compulsory acquisition or open market purchase, it is a management tool and a means of increasing public access to urban land which in the long run ensures a cheap supply of land for public uses and may also arrest undesirable development.¹⁰⁵

The term land banking embraces many issues and is quite capable of being defined in more than one way. In analysing the concept of land banking George Kanyeihamba wrote:

Land banking has been used to denote the concept whereby land is acquired and retained in advance of actual need. The acquisition can be by private speculators or public authorities ... The objects of acquisition include, inter alia, the enhancement of revenue collection, curbing of land prices and speculation, control and dispersal of population¹⁰⁶.

Land banking has also been defined as "a system by which a government entity acquires a substantial fraction of the land in a region that is available for development for the purpose of controlling the future growth of the region"¹⁰⁷

When compared, the two definitions above are more or less similar. We however, find the first definition quoted above to be much broader and more applicable as far as urban planning and development is concerned. While the second definition tends to conceive of land banking as acquisition of land by 'a government entity' Kanyeihamba's concept embraces any land 'acquired and retained in advance of actual need' irrespective of whether such acquisition is by public authorities or private developers. Since both public and private bodies are directly involved in the quest for urban land, there cannot be a better concept of land banking than that which enhances the prospects of all user groups to gain access to land as and when required for development projects. The concept of land banking therefore, simply refers to the art of acquisition of land and banking that land in advance of actual need with the view to keeping land prices down and ensuring that the developer does not suffer financially when the need to purchase land arises in future.

In countries like Netherlands and Sweden, land banking and active public presence in land market has been a feature of the system of land use controls.¹⁰⁸ In these two countries land banking and public involvement in the land market have been generally successful.¹⁰⁹ This however does not mean that all the advanced nations have achieved the same degree of success with land banking. Its success in the two countries mentioned above was mainly due to the efficient and relatively incorruptible administration of the

system, but it failed in England and France due to the poor and uncoordinated way it was administered.¹¹⁰ This point brings us to the issue of effective administration and how it affects the entire system of land banking.

ADMINISTRATION OF LAND BANKING

Any discussion on land banking which does not touch on the administrative aspect of the subject is incomplete. Since the major idea behind the whole system of land banking is based on the need for efficient and equitable urban land policies and the successful implementation of such policies, it is important that researchers in this area pay attention not only to the art of public acquisition of land but also to the administration and management of the land publicly acquired. Failure to ensure an effective administrative machinery for the acquired land can be a very costly mistake. It is good enough to acquire and assemble large portions of land for the purposes of land banking, but if the acquisition is not accompanied by good administration it can amount to a wasted effort. Instead of helping both the acquiring authority and the landowners it can, on account of bad administration, contribute to a shortage and inflation in the price of urban land.

It was observed:

The point has been made by several commentators that the success of land banking in Sweden and The Netherlands is in large measure due to a variety of supporting measures and very sound administration, and it may be suggested that the failure of any extensive land banking in the U.K. has been precisely the lack of those factors - too little connection with general policies and programmes of planning and housing and a failure to determine the most appropriate administrative structure for a programme¹¹¹.

Also a U.N. Publication has this to say:

The problem of establishing an appropriate structure for a land authority is connected with the general problems of public administrative structure. One of the difficulties in coordination is the link between the planning, financing and land owning authorities. Differences between them result from the conflict between short-term and long-term needs and between local, regional and national requirements. There is generally permanent dissension between the agencies representing different public functions. This is an unsolved problem particularly in the countries with centrally planning economies which are trying to improve coordination in the public administrative structure in order to reduce the degree of conflict¹¹².

Apart from the ills that are inherent in any land banking system which does not ensure effective administrative structure, the two quotations above testify to the fact that there cannot be a substitute for effective administration in land banking. In other words, good administration is the key to useful land banking. These points may be better appreciated by the reader if we highlight some of the practical problems that can beset an acquiring authority soon after getting hold of the land for the purposes of land banking.

Public authorities that require land for banking purposes may, and quite often do, face a number of problems relating to its administration, use and control. First of all, it is not in all cases that the acquired land turns out to be virgin land. In some cases such land turns out to be land previously occupied by both lawful tenants and squatters. Since land acquired for land banking purposes is not meant for immediate development, the crucial question here is: should the occupiers be allowed to stay on the land pending the time when such land will be needed by the public authorities for urban development schemes? Or, on the other hand, should the occupiers be dispossessed immediately the land is acquired and allow the land to lie idle for an indefinite period of time?

The most reasonable course of action in a situation like this would be to allow the occupiers to stay on the land temporarily and be evicted only when the need for such land arises. If, however, there is alternative land outside the urban jurisdiction it is only fair and equitable that such alternative land is offered to the dispossessed. But in the event of the authorities allowing the previous occupiers to remain temporarily on the land, there is the duty, on the part of the authority concerned, to explain fully to the occupiers the conditions on which they are allowed to stay on the land. If such steps are not taken, many problems may emerge in the long run. For instance, cases of illegal sales, transfer of occupancy rights, subdivision or erection of illegal structures may eventually surface on the land. These are just a few out of a series of problems that the acquiring authority may have to contend with. The safest thing to do therefore is to educate the occupiers on the actual terms and conditions of their new occupancy. When fully informed, and particularly when offered some alternative land elsewhere, many of the occupiers may well choose to move to the newly offered alternative land. If however some choose to remain temporarily on the land despite the fact that they have been offered some alternative land, it would be advisable to ensure adequate periodic supervision and surveys of the land by officials of the public authority concerned so as to check further illegal development on the land. Apart from serving as a deterrent to all sorts of illegal activities, if such periodic surveys by the controlling authority are accompanied by a constant review of its land requirement and regular forecasts of possible development projects within certain specific parcels of the acquired land, it would help

to remind the occupiers of the temporary nature of their stay and the need to take necessary steps to acquire new land elsewhere.

Even in a situation where all the previous occupiers unanimously decide to vacate the land the acquiring authority faces the problem of what to do with the vacant land in the interim period before it is needed for any particular development scheme. The authority is likely to lose revenue by way of rates and taxes which was hitherto paid by the previous occupiers. Apart from these social and economic problems the acquiring authority may also be confronted with sensitive issues which are political in nature in the way and manner they treat the dispossessed land owners. Bearing all these and other related issues in mind, one begins to wonder whether the governments and their agencies in the Third World have the capacity to embark on land banking programmes. A World Bank Staff working paper analysing land banking in the Netherlands and Sweden reported that:

The institutional framework and administrative resources in these countries are completely different from those in most of the rapidly urbanising developing nations and it is very doubtful if the same government control over land conversion could be successful without those institutions and resources.

The report goes further to highlight one of the major problems of land banking in the Third World:

The introduction of a land bank operation to buy raw land at its opportunity cost in non-urban uses would involve a reduction of all raw land values to their current use values. It would also greatly increase the rewards to illegal subdivision of unserviced land, already a severe problem in many rapidly growing low income areas. Thus, success of this sort of land bank would require strict

enforcement against illegal subdivision ... The price of such illegally subdivided land could almost approach the price of legally subdivided land if the government pursues a policy of subsequently upgrading the illegal settlements by providing clear titles and public services¹¹³.

There is no doubt that the above statements tend to suggest that land banking in the Third World countries may not be successful largely due to the inadequacy of necessary agencies of development, namely, manpower, finance and technology. But on the contrary, we are of the view that land banking can be an effective weapon against the severe problem of price increases and land speculation that has become a major characteristic of every major city in the Third World countries.¹¹⁴ While commenting on sites and services programmes in the developing countries Grimes noted that:

.... Capital gains taxation and public acquisition of plots in advance of need are among the tools used to appropriate increases in land value for public use. Such measures can help make serviced land available at more reasonable prices.¹¹⁵

Thus, some of the practical and administrative problems of land banking earlier mentioned notwithstanding, we strongly believe that the developing countries can and should embark on land banking programmes. such programmes could be started on a very small scale and be gradually expanded as and when the financial and administrative resources of the country concerned improve. Serious issues such as excessive land speculation, high land prices and over concentration of urban population can all be tackled by ensuring that the governments and their agencies acquire land in advance of actual need.

When a public authority acquires land compulsorily whether for the purposes of land banking or for immediate development projects the next obvious thing to consider is the status of the dispossessed. That

is to say, does the dispossessed remain landless forever simply because the land he or she has surrendered is to be used for a particular development scheme which will benefit the entire society of which the dispossessed is a member? This raises the issue of compensation due to the land owners. If they do get compensated who determined what amount or its equivalent to be given out and on what criteria is that quantified? These and other related issues are what we seek to examine in the next section of this chapter.

SECTION C

COMPENSATION

We have so far in this chapter considered the relationship between land tenure and urban planning and development. We have also touched on land acquisition by public authorities for the purposes of urban development. In this part of the chapter focus shifts to the very important issue of compensation. While very few land owners challenge the public purpose of a particular taking by the state, many may challenge the compensation they are offered. The problem of challenging compensation can be particularly serious in developing countries where land is often held as much for its social and political significance as for its economic value.¹¹⁶ However, in both the advanced and the developing countries the issue of compensation has proved to be one of the most intractable problems.¹¹⁷ The position of compensation under the common law of England has been described as follows:-

It is a basic principle of law that when an owner of land has his interest in the land taken from him under statutory powers he is entitled to compensation as of right unless the

statute expressly deprives him of that right. It is still possible for land to be taken by the crown for defence purposes in an emergency without payment of compensation but, as indicated ... the prerogative powers of the crown are superseded whenever an Act is passed regulating the exercise of a particular power. In normal times, therefore, compulsory purchase must be authorised by statute and compensation is payable in accordance with the terms of the statute¹¹⁸

It can be seen from the above quotation that, except in exceptional emergency situations, the common law of England recognises the need for compensation when there is an intervention by the State or its agencies in the possession and use of privately owned property. Similarly, the fifth amendment to the United States Constitution provides for the payment of compensation in respect of private property taken for public use. This provision is made applicable to the component states by the fourteenth amendment.¹¹⁹ In fact, in America rights to compensations are extended to future, present and intangible interests in property. In other words, rights in property can, according to this reasoning, be destroyed by interference or restriction on its use, though the owner remains in possession of such property. For example, in the case of United States V Causby¹²⁰, it was held that incessant noise from aircraft frequently flying over the appellant's land constituted a direct and immediate interference with the use and enjoyment of his land and as such amounted to a taking over.

Even in the Soviet Union, where people tend to suggest that individuals are not allowed to own land or personal rights in land, the need for compensation does arise in exceptional circumstances when the rights of citizens to use lands allotted to them by the community are terminated and the land acquired for public purpose.¹²¹

As far as the rules of compensation in pre-colonial African legal systems are concerned we can divide them into two categories i.e. (a) Those arising from compulsory acquisition of family or tribal land for the establishment of public institutions like Market Squares, traditional village shrines or public open spaces and playing ground; (b) where land is compulsorily acquired as a punitive expropriation through the traditional machinery for public justice.¹²²

In the case of compulsory acquisition type (b) above the question of compensation does not arise since the expropriated land owner is meant to suffer some punishment for offences against the socio-political group. But acquisition of type (a) above simply refers to situations where community elders seek to acquire a piece of land held over the years by a family or clan in the overall interest of the public. In such a case the expropriated families would always be entitled to some compensation.¹²³ Compensation in those older days was not strictly on a cash basis as it is in our modern economic system. The dispossessed were often offered suitable alternative land elsewhere.¹²⁴

It can be seen from the foregoing discussion that in both the advanced and the developing countries it is not so much the question of whether compensation should be payable that is constituting a problem between the acquiring authorities and the land owners but instead it is how to reconcile and solve the problems of land values and positive planning. There is no doubt that the planning and development authorities that seek to acquire private land for public purposes are out to ensure positive planning. But each time such decisions are taken they are likely, not only to trigger the

landowners into claiming high compensation, but also to have adverse effect on market expectations. The major question here is how to compensate the landowners adequately but at the same time making sure that the payment of compensation does not become a great burden on the public purse. We may now examine some of the early colonial and post colonial laws governing compensation in Africa.

The Gold Coast Public lands Ordinance of 1876 for instance dealt with the issue of compensation rather cautiously. It only required payment to owners of "such reasonable compensation... as may be due"¹²⁵ However subsequent legislation in other parts of Africa was far more generous than the Gold Coast Colonial legislation of 1876. An example of this was the Indian Land Acquisition Act of 1894, applied in East Africa, which provided the following as determinants for compensation: the market value of the land; the damage sustained by the taking of standing crops or trees on the land when possession was taken; damage from severance; damage to the person from whom the land was compulsorily acquired "by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings"; reasonable expenses incidental to a change of residence or place of business made necessary by the acquisition; damage bona fide resulting from diminution of the profits of the land in the interval between the public notice of taking and the actual taking; and, in addition to market value, an extra 15% "in consideration of the compulsory nature of the acquisition"¹²⁶ The most prominent feature of this legislation that may strike the reader is its apparent generosity to the landowner whose land is compulsorily acquired. We may now, considering the above determinants for compensation, examine whether the land owner in Africa can be adequately compensated.

ADEQUATE COMPENSATION

The value of compensation may be determined by a number of factors. Such factors may range from the law applicable in a particular country, which may have been enacted to conform with the economic realities of the society in question, to the nature and location of the land to be acquired. The urgency with which the acquiring authority requires the land may sometimes determine their willingness to offer generous compensation, as may the bargaining power of the particular land owner. All these are factors which determine what amount is payable at what time and in which society. However, there may be some instances when the compensation paid tends to be below reasonable standard. This is when the term 'adequate compensation' may be applicable.

The Indian Land Acquisition Act earlier cited refers to the term "the market value of the land". Whether a landowner is compensated on the basis of 'the market value of the land' or 'adequately' what is required, in our view, is that he (the land owner) receives for the property so acquired, its equivalent in money, so that the property is not diminished in amount.

In a Nigerian Case, Esi V Warri Divisional Town Planning Authority,¹²⁷ the term 'full market value' became the subject of protracted legal debate. In that case it was contended that adequate compensation means "full market value or the price payable by a willing buyer to a willing seller", and that a fair market value is less than the full market value and therefore cannot amount to adequate compensation. The trial judge whilst conceding that a full market value may be more than a fair market value drew attention to the fact that, "it is a matter within common experience that a

willing seller in the market indeed in private may not and does not usually get the full market value; if he does get a fair market value he is quite contented and happy" he went on to state "it is clear that adequate compensation means not only a full market value but also "the price paid by a willing buyer to a willing seller" which in the context of that definition must be lower than a full market value. I have no difficulty in equating 'the price paid by a willing buyer to a willing seller with a fair market value.'¹²⁸

The Judge went on to say "compensation means the equivalent in value of the property taken but not necessarily in money... the amount of compensation must be a just equivalent and the principles and manner of determining compensation must be such as to ensure that it is just and reasonable... And a law that provides for a fair market value as a basis for determining compensation is clearly in my view just and reasonable"¹²⁹

The implication of the above judgement is that the acquiring authorities need not always pay 'full market value of the land as compensation, and that a fair market value will be sufficient as compensation. This raises the two fundamental issues surrounding the whole idea of compensation. There is first of all the aspiration of the landowner who will naturally want to obtain the greatest value possible for his land. Secondly, there is the desire on the part of the acquiring authority to beat down the amount of compensation payable since the payment of higher compensation will necessarily upset the capital amount budgeted for the implementation of the development scheme which is to be carried out on the acquired land. These two conflicting interests may explain why negotiations between these two parties in respect of compensation tend to be protracted or

in some cases end in litigation. This clearly demonstrates the need for evolving a workable and acceptable formula which will ensure that the interest of each party is protected.

This issue is much more pronounced in the developing countries where the land owners are mostly ignorant and poor and as such may be easily lured into accepting paltry offers from the acquiring authorities. When compared with their counterparts in the more advanced countries, land owners in the developing countries are less educated and have very little or no socio-political and economic influence to put them in a better bargaining position with the acquiring authorities. Also land owners in the more advanced nations have access to professional advice from expert valuers and, when necessary, legal representation. All these facilities are in short supply in the Third World countries.¹³⁰ Thus, apart from accepting and practising the general principle that compensations need not be equivalent of full market value and that a fair market value is just and reasonable, there is the need to evolve a new legal framework which will ensure that ignorance of the land owners in the Third World and their poor bargaining powers are not exploited by the acquiring authorities.

Another important point worth mentioning is the need on the part of the appropriate authorities to ensure that due considerations are given to the peculiar nature of most indigenous systems of land tenure when framing compensation formulae. This is because measures which are necessarily interventionist, such as those of compulsory acquisition, if drafted with insufficient understanding of indigenous law, may generate many problems. A classic example of this is provided by the controversy which took place over "unoccupied" lands

in Nigeria. The 1903 compulsory acquisition legislation in Nigeria, for instance, provided that no compensation would be paid for unoccupied lands, which were defined as follows:

Lands shall be deemed to be unoccupied where it is not proved that beneficial use thereof for cultivation, or inhabitation, or for collecting or storing water or for any industrial purpose has been had for a continuous period of at least six months during the period of ten years immediately preceding the publication of the notice stating that such lands are required for public purposes¹³¹

When examined critically, it can be seen that the definition above does not suit Nigeria or indeed any traditional African community. In most African societies land not under cultivation would nonetheless be regularly used for many purposes, chief among them the grazing of animals and the collection of uncultivated produce. It was the existence of such customary land use in Nigeria that led to a judicial review of Section 14 of the 1903 Public Lands Ordinance and the interpretation of the phrase "beneficial use... for any industrial purpose" in the celebrated case of Amodu Tijani V Secretary, Southern Provinces¹³² The facts of the case are summarised below.

The Government proposed under S.4 of the Public lands Ordinance of 1903 to acquire lands belonging to the community represented by their chief. It became obvious that the claimant was entitled to compensation on behalf of the community. Part of the land to be acquired consisted of palm swamp, mangrove swamp and grass swamp. Now the Divisional Court was faced with the problem of interpreting Section 14 of the Ordinance which, as earlier cited, provided that no compensation should be awarded in respect of unoccupied lands.

In his own testimony the claimant proved that the inhabitants of the village, who regularly paid tribute to him for the use they made

of the lands in question, collected palm nuts from the palm swamp, caught mud fish and also cut mangrove wood in the mangrove swamp. Also oil was locally extracted from the palm nuts and sold to the public while the mangrove wood was converted into charcoal by the villagers.

The Divisional Court held that the swamp lands were unoccupied within the meaning of the Ordinance and that "the Crown [State] is under no obligation to pay anyone for unoccupied lands as defined."¹³³

On appeal to the Full Court Combe C. J., who delivered the judgement of that Court was of the opinion that the judge at the lower court had placed "a too narrow interpretation on the language of the section which, as we have stated, must be interpreted as widely as possible in favour of the claimant".¹³⁴ The learned Chief Justice therefore held as follows:

- (i) "that Section 14, in so far as it sought to preclude the court from awarding compensation to the owner of land acquired by the crown unless the land shall have been occupied for certain specific purposes, may properly be regarded as to that extent, a confiscating section and ought therefore to be construed with almost a jealous regard for the interest sought to be confiscated";
- (ii) that the words "beneficial use" means beneficial to the user and not to the land;
- (iii) that the swamp lands were not unoccupied lands in that claimant had proved that a beneficial use of an industrial purpose had been had of the palm swamp and mangrove swamp lands and that a beneficial use by the inhabitants had been had of the grass swamp land adjacent to the village on which the goats of the village grazed.¹³⁵

The above judgement points to the fact that while certain definitions may be appropriate for the advanced countries with settled farmers on enclosed lands they can hardly suit the African community with different history of land tenure and land uses. Apart from the liberal judicial construction of the phrase "beneficial use ... for

industrial purpose" in the above judgement, the existence of various other customary land uses in the country might have been one of the factors that led to the 1945 amendment providing compensation for those exercising rights of "fishing, hunting, grazing or the collection of uncultivated produce".¹³⁶

Our discussion, so far, may lead the reader to believe that prior to independence compensation in Nigeria was generally paid on rather generous terms. It is important to note that Combe C. J., while delivering the above quoted judgement, gave the warning that each case must be treated strictly on its own peculiar facts.¹³⁷ That is to say, the Judgement in Amodu Tijani case cannot be a valid precedent in, for instance, a situation where the acquiring authority proves that the claimant only makes intermittent use of the land for collecting wild products as and when they are ripe. It is also interesting to note that though the post independent African states have neither denied the justice of requiring compensation for the taking of private property nor denied that this payment be assessed on some fair basis, they tend to restrict such payment to developed lands.¹³⁸

This tendency seems particularly more pronounced in Tanzania than in many parts of Africa. According to the Tanzanian Land Acquisition Act of 1967,¹³⁹ compensation payable for land taken by compulsory acquisition is to be on the basis of its "value at the time of notice of intention to acquire the land."¹⁴⁰ This compensation is not to be awarded for land which is "vacant ground"¹⁴¹ and also in a situation where a particular piece of land is inadequately developed compensation is to be limited to the value of unexhausted improvements.

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It can be seen from some of the provisions of the Tanzanian legislation that one way of harmonizing the law of compulsory acquisition with national goals for economic development is simply to deny compensation for land which is undeveloped and to allow less than full compensation for land which is inadequately developed. We are however not unaware of the fact that some land owners may be unfairly treated, particularly in cases where development guidelines are not reasonably precise. But we are of the view that the existence of such rules may put pressure on land owners to develop their land in accordance with applicable guidelines. Also considering the 1963 land reform in Tanzania which converted all freeholds into leaseholds,¹⁴² anyone who acquires a piece of land does so on the simple assumption that he or she is going to develop it. Since this reform was undertaken with the aim of stimulating development, anyone who chooses not to develop his land does not deserve any compensation when such land is acquired compulsorily for development purposes. This approach is also consistent with the premise of African socialism that rights over land should depend on use and, implicitly, on proper use.¹⁴³

Before we end our discussion in this section of the chapter we may touch on other general issues regarding the payment of compensation. Such issues include the mode of payment, when payment is to be made and whether or not the dispossessed land owner deserves some amount over and above the actual value of his land for the simple fact that he suffers some disturbance in the course of selling his land compulsorily.

MODE AND TIME OF PAYMENT

The form in which payment is made in cases of compulsory acquisition can significantly affect urban planning and development.

The question that arises here is whether the acquiring authorities should pay the dispossessed in kind or in cash. It seems far more desirable, particularly in poor countries of the Third World, to compensate in kind rather than in money. Many African states, for instance, suffer from acute shortage of money and if compensation in kind is made by giving the expropriated owner alternative land of an area equal to the area of the land taken from him the government can use the available funds to implement the project for which the land is acquired. Also, as earlier indicated in Section one of this chapter, there is the tendency on the part of the land owners to use the cash paid to them as compensation to buy cars or marry more wives instead of acquiring new plot of land.

The time within which compensation is paid is yet another important point worth mentioning. This is irrespective of whether the compensation is in cash or in kind. If compensation is delayed or not paid at all, the most reasonable thing would be for the land owner to be in full possession of his land until such a time when the acquiring authority settles all claims regarding the land. However, the question we need to address our minds to here is whether there can be some special circumstances when the acquiring authority can get hold of the land even before settling all the compensation claims.

First of all, if an acquiring authority gets hold of the land before all compensation issues are sorted out and settled there is the possibility that such an authority will be less enthusiastic in settling the compensation in the nearest future. On the other hand, if the authority and the landowner fail to agree on the issue of compensation and if protracted negotiations for compensation are allowed to end in a deadlock, there may be the possibility of the

particular development scheme eluding the community. Our opinion here is that, in exceptional situations where the land is required for an important development project the authority should be allowed to get hold of the land but it is also advisable for the government to consider legislating here that a certain percentage should be payable before the acquiring authority gains entrance to the land. If such an amount is handsome the chances are that the landowners will be willing to come to terms much more quickly. Again, the acquiring authority may decide, after gaining entrance into the land, to delay or even deliberately refuse to pay the outstanding amount. In such a case, the law should provide that the acquiring authority would be liable to pay 5-10% interest annually if it delays payment of compensation after getting hold of the land. This is because the land owner deserves to be paid his compensation in good time so as to acquire new property elsewhere. In fact, it could well be argued that he deserves a little extra money for compulsorily parting with his property.

PAYMENT FOR DISTURBANCE

In a normal and ordinary free sale on the open market the buyer pays a price acceptable to the seller without incurring any other incidental costs to the advantage of the landowner. This is a very normal open market transaction. In such a case it is difficult to imagine how the landowner can talk the buyer into paying extras without any corresponding benefits in return. But unlike the open market situation, where cost price simply represents the equivalent in value of what has been sold, compensation may include some amount over and above the open market value of the land. This is mostly referred to as compensation for disturbance.¹⁴⁴ The rationale behind this is

the fact that this can serve as a solace to the dispossessed who suffers psychologically from the loss of his home and whose special hardship can never be fully compensated in terms of monetary value. No amount of money can compensate the loss of friends and acquaintances in the neighbourhood which have been established over so many years.

From all the issues raised and discussed in this chapter, it can be seen that the overall function of urban development corporations depends, to a large extent, on the nature and scope of the land tenure laws that are in operation, the rules and regulations that govern the exercise of their compulsory acquisition powers and the laws and practice of payment of compensation for the properties so acquired. Our discussion points to the fact that, even though it may be necessary to limit the public purpose for which land is to be compulsorily acquired so as to avoid unnecessary abuse of discretionary powers by government officials, extreme public purpose limitation is unsuited to a modern, development-oriented African State. Also regarding the procedure to be used in compulsory acquisition, even though certain measures are necessary to protect the interest of those whose property is expropriated, in order to attain the necessary economic development objectives of the developing nations legal framework that will enable the State to take possession of the property early in the process seems desirable. This chapter also has revealed to the reader the fact that it is the Urban development corporations' legal powers over land and the mode of using those powers that significantly determine the success or failure of these corporations. It is hoped that the above discussion will provide the basis for analysing similar issues in the individual case study of some specific urban development corporations in the chapters ahead. We may now go to the next chapter where we intend to undertake a specific case-study of a particular urban development corporation.

CHAPTER THREENOTES AND REFERENCES

1. See A. P. Van Huyck and M. Kaplan, Guidelines For Establishing And Administering Land Development Agencies In The Developing Countries, Washington, D.C., PADCO, Inc. 1973, P.i
2. Ibid P.2
3. See G. W. Kanyeihamba, "The Impact of the Received Law on Planning and Development in Anglophonic Africa" (1980) International Journal of Urban and Regional Research, p. 245.
4. See Bohannan, P., "'Land', 'tenure' and 'Land-Tenure'" in Biebuyek, D (ed), African Agrarian Systems, London, Oxford University Press, 1963 p. 102
5. See White, C. M. N., "Terminological confusion in African Land Tenure" (1958) Vol. X No. 3 J. A. A. p.124
- 5A. This is however not suggesting that there are as many land tenures as there are tribes in Africa.
6. See Ghai, Y. P. and McAuslan, J. P. W. B., Public Law and Political Change in Kenya London and Nairobi, Oxford University Press, 1970, P. 525 Also in Nigeria, there are many tribes with varying customs and traditions and different land tenure rules.
7. The issue of variation and flexibility inherent in customary Land Law was raised by Osborne C. J. in the case of Lewis V. Bankole, (1908) NLR 81 100-1

8. See R. W. James and G. M. Fimbo, Customary Land Law of Tanzania, Nairobi, Kampala and Dar es Salaam, EALB, 1973 P.7
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9. T. O. Elias, Nigerian Land Law, London, Sweet and Maxwell, 1971 P.72
10. Ibid P. 78
11. [1921] 2 A.C. 399 quoted in T. O. Elias Ibid P. 72
12. For more discussion on the normal unit of ownership of Land in Nigeria, Ghana and greater part of West Africa see the following texts: James, R. W. and Kasunmu, A. B., Alienation of Family Property in Southern Nigeria, Ibadan, University of Ibadan Press, 1966; Meek, C. K. Land Tenure and Land Administration in Nigeria and The Cameroons (1957, H.M.S.O.; Bentsi Enchill, K. Ghana Land Laws: An Exposition, Analysis and Critique, London, Sweet and Maxwell, 1964.
13. See Hailey, N. M. H. African Survey, London, New York, Oxford University Press, 1957, pp. 768, 802 see also the Eastern Nigerian case of Eze Vlgiliegbu (1952) 14 W.A.C.A. 61
14. See Audrey I. Richards (ed) East African Chiefs, London, Faber and Faber Limited, 1959 pp. 27-40
15. See R. W. James and G. M. Fimbo, op cit P.4

16. For more discussion on the political structure of the Buganda Kingdom and the feudal status of the Kabaka see the following texts.
- (i) Audrey I. Richards (ed) East African Chiefs op. cit.
 - (ii) David E. Apter, The Political Kingdom in Uganda, Princeton, New Jersey, Princeton University Press, 1967
 - (iii) D. A. Low, Buganda in Modern History, London, Weidenfield and Nicolson 1971
 - (iv) M. S. M. Semakula Kiwanuka, A History of Buganda - From the Foundation of the Kingdom to 1900, London, Longman Group Limited, 1971
17. See Kanyeihamba, G. W., Law in Urban Planning and Development in East Africa, Ph.D. Thesis University of Warwick, 1974 P.97
18. Ibid. P.99
19. R. W. James and G. M. Fimbo op.cit. P.15
20. Ibid
21. Ibid. P. 16
22. Ibid.
23. [1948] 16 E.A.C.A. 79

24. This passage is quoted from R. W. James and G. M. Fimbo op. cit. p. 16
25. See T. O. Elias, The Nature of African Customary Law, London, Butler and Tanner, 1972 P. 164
26. Kenyatta, J. Facing Mount Kenya London, Mercury Books, 1961, P.8
27. Ibid P. 174
28. Ibid P.1
29. See Carlson, K. S. Social Theory and African Tribal Organisation, Urbana Chicago, University of Illinois Press, 1968 P. 282
30. See Kenyatta op. cit. P. 1
31. Ibid P. 21
32. Ibid. PP. 21 and 25
33. See Taylor, D. R. F. "Changing Land Tenure and Settlement in Fort Hall District of Kenya", (1964) Vol. 40 Land Economics, P. 234
34. Hemmings, R. D. "Some Trends and Problems of African Land Tenure in Kenya" (1952) Vol. IV and 4 J. A. A. P. 126

35. Taylor op. cit. P. 234
36. Kenyatta op. cit. P. 31
37. Ibid. PP. 31-32
38. See Homan, F. D. "Inheritance in Kenya Land Units" (1958) Vol. X No. 3 J. A. A. P. 131
39. Kenyatta op. cit. P. 33
40. Ibid. PP. 32-33
41. T. O. Elias, The Nature of African Customary Law, op. cit. P. 162
42. (1913) S. E. A. L. R. 141 quoted in Kanyeihamba G. W. Law in Urban Planning and Development in East Africa, PhD. Thesis, University of Warwick, 1974, op cit. p.102.
43. See Lewis, A. The Theory of Economic Growth. London, George Allen and Unwin, 1970, P. 121
44. In the case of the Akamba tribe of Kenya for instance, it is possible to establish exclusive rights to grazing land by establishing residence on the land. For more details on this see the following texts:
Middleton, J. and Kershaw, G. The Central Tribes of the North-Eastern Bantu, London, International African Institute, 1965, P. 78.

Maini, K. M., Land Law in East Africa. Nairobi, Oxford University Press, 1967, P. 36

45. T. O. Elias, The Nature of African Customary Law, op. cit. P. 166
46. See F. M. Mifsud, Customary Land Law in Africa, Rome, FAO, 1967, P. 3
47. Famoriyo, S., "Land Transactions and Agricultural Development in Nigeria" Vol. 7 Nos. 1 and 2 East Africa Journal of Rural Development 1974
48. Abrams, C., "Urban Land Problems and Policies" Housing, Town and Country Planning (New York, United Nations, 1953).
49. Simpson, S. R. "Towards a Definition of Absolute Ownership":II Vol. 5 (1961) J. A. L. P. 146
50. See a reply to Simpson by Dr. Allot A. N. in Vol. 5 (1961) J.A.L. p.149
51. See Honore, A. M. "Ownership" in Guest, A. G. (ed) Oxford Essays in Jurisprudence, London, Oxford University Press, 1961 PP. 107-147
52. Ibid P. 108
53. Ibid P. 113

54. Ibid P. 113
55. Ibid 116-117
56. Ibid P. 118
57. See A. T. Salau "Land Policies for Urban and National Development in Nigeria" Vol. XVIII Nos. 1-4 Journal of Administration Overseas, 1978 P. 117
58. United Nations, Urban Land Policies and Land Use Control Measures, Vol. 1, Africa, (New York, 1973) PP. 1-2
59. See generally Ifere, M. O. "A Positive Approach to African Land Tenure Questions" (1974) Agricultural Economics Bulletin for Africa, No. 16, PP. 21-30
60. See Gershenberg, I. "Customary Land Tenure as a constraint on Agricultural Development: A Revaluation" (1975) East African Journal of Rural Development, P. 56
61. McAuslan, J. P. W. B. "Law, Housing and the City in Africa" in G. W. Kanyeihamba and McAuslan J. P. W. B. (ed) Urban Legal Problems in East Africa, Uppsala, ICL, New York, 1978 PP. 11-38
62. See Mifsud, F. M. Customary Land Law in Africa op. cit. P. 45
63. U. N. (Department of Economic Affairs), Land Reform: Defects in Agrarian Structure as obstacles to Economic Development, New

York, UN. 1951 P. 11

64. Lopez, P. and Jacoby, E. H. Principles of Land Consolidation Legislation, Rome, F.A.O., 1962 P. 4
65. In Nigeria today each of the 19 states has its urban development and planning board. Tanzania and Malawi each established a Capital Development Authority to plan and develop their newly created capital cities. Also the major cities of India - Bombay, Calcutta, Delhi, Madras - have each established urban development Authority to perform functions relating to urban planning and development.
66. See Walsh, A. H., The Urban Challenge to Government, New York, Praeger, 1969 P. 212
67. Though such things are not always documented, our discussions with officials of various urban development corporations confirm the fact that it is only in very rare situations that such corporations go to buy land in an open market. In most cases they do not hesitate to use their powers of compulsory acquisition.
68. Throughout this chapter the terms "compulsory acquisition", "eminent domain" and "expropriation" will be used interchangeably. In the United States "eminent domain" is the most familiar term, "compulsory acquisition" or "compulsory purchase" is generally used in anglophonic Africa while "expropriation" is the term most commonly used in francophonic Africa.

69. See Kwamena Bentsi-Enchill, Ghana Land Law, London, Sweet and Maxwell, 1964 P. 285
70. See Generally, D. M. Lawrance and V. Moore, Compulsory Purchase and Compensation, London, Western Printing Service Ltd. 1972; Harold J. J. Brown, The Land Compensation Act 1973, London, Sweet and Maxwell, 1973; also, the fifth amendment to the United States Constitution requires the payment of 'just compensation whenever the government takes property for a public use.
71. See the following texts:
Douglas Brown, Land Acquisition - An examination of the principles of law governing the compulsory acquisition or resumption of land in Australia and New Zealand, London, Melbourne, Wellington, Butterworth Pty. Limited, 1972; Sir John Boynton and David J. Hawkins, Compulsory Purchase and Compensation, London, Oyez Longman Publishing Limited, 1983; See also Report on Expropriation, Law Reform Commission of Canada, March, 1976
72. See R. Rattray, Ashanti Law and Constitution, London, Oxford University Press, 1969, PP. 348-50
73. See J. A. Umeh, Compulsory Acquisition of Land and Compensation in Nigeria, London, Sweet and Maxwell, 1973, P. 17
74. See Public Lands Ordinance, 1876, 3 Laws Of The Gold Coast, CAP 134. For references to the early use of this ordinance see Belfield, Report on the Legislation Governing Alienation of

Native Lands in the Gold Coast Colony and Ashanti, Cd. 6278, at 13-14 (1912), quoted in K. Bentzi-Enchill op. cit.

75. See for instance, 3 LAWS OF UGANDA CAP 120, (Revised ed. 1951)
76. See section 2 Public Lands Ordinance, No. 5 of 1903
77. See Public Lands Ordinance, 1876, section 2, op. cit. 1 Ordinances of the Gold Coast Colony 1876, No. 8 (Rev. ed. 1910). This became, as amended, section 3 of the Public Lands Ordinance, 1876, 3 LAWS OF THE GOLD COAST CAP 134.
78. Lands Acquisition Act, 1894 op. cit. 3 LAWS OF UGANDA CAP 120 Section 3(f) (Rev. ed. 1951)
79. Ibid. Section 40(1) (b). Section 41 provided for an agreement between the company and the government on, inter alia, "the terms on which the public shall be entitled to use the work"
80. See section 2, Public Lands Ordinance No. 5 of 1903 op. cit.
81. See Public Lands Acquisition Ordinance, 1917, 5 LAWS OF THE FEDERATION OF NIGERIA AND LAGOS CAP 167. Section 2 (Rev. ed. 1958)
82. Lands Acquisition Ordinance, 1926, 2 LAWS OF TANGANYIKA CAP 118 (Rev. Ed. 1947)
83. Ibid Section 2

84. The Governor and the legislative council had to be satisfied that the land in this case was required "for the purpose of the construction of works of public utility". See Ibid Section 30
85. See Harrison C. Dunning "Law and Economic Development in Africa: The Law of Eminent Domain" Vol. 68: 1286, Columbia Law Review, 1968 P. 1295
86. Land Acquisition Ordinance (Amendment) Act, 1965 Section 3, Tanzania Acts 1965 No. 3
87. Land Acquisition Act, 1967, Tanzania Acts 1967 No. 47 This Legislation was made operational as from March, 23, 1968 by Government Notice No. 120 of 1968
88. Ibid Section 4
89. See Chief Commissioner, Eastern Provinces V Ononye and Five Others, 17 N.L.R. 142 (Protectorate High Court, 1944) quoted in J. A. Umeh op. cit. P. 23
90. Constitutional Commission, Memorandum on the Proposals for a Constitution for Ghana (1968) P. 59 quoted in Harrison C. Dunning, op. cit P. 1300
91. Ibid 57-59
92. See Harrison C. Dunning "Law and Economic Development in Africa" The Law of Eminent Domain" op. cit. P. 1299

93. Ibid
94. See Second Five Year Development Plan, Imperial Ethiopian Government, 1962 P. 239
95. Harrison C. Dunning, "Law and Economic Development in Africa" The Law of Eminent Domain op. cit. P. 1311
96. See Land Acquisition Ordinance, 1930, 7 LAWS OF THE SUDAN, Title XX, Sub-title 3 Section 9 (Rev. ed. 1955)
97. East Africa Royal Commission Report (1953-55) Cmd. No. 9475, 1955 P. 354

The requirement for registration in Kenya and Uganda would have been in addition to the various steps required by the Indian Land Acquisition Act of 1894, which in its application in Kenya has been described as "a cumbersome process in practice". See Report of Working Party on African Land Tenure 1957-58 (Kenya 1958)
98. J. A. Oluwatudimu, "Compulsory Acquisition and Compensation" Unpublished paper read to the Nigerian Estate Surveyors and Valuers, July 9th, 1970 P.S quoted in J. A. Umeh op. cit. P. 32
99. Public Lands Acquisition Law Cap. 167 op. cit. Section 8 (1)
100. Ibid Section 9 (3)
101. Section 10

103. See A. P. Van Huyck and M. Kaplan, 'Guidelines for Establishing and Administering Land Development Agencies in the Developing Countries, op. cit. P. 10

104 Ibid. P. 11

105. See A. T. Salau, "Land Policies for urban and National Development in Nigeria" op. cit. P. 190

106. See G. W. Kanyeihamba, "Land Banking" in G. W. Kanyeihamba and J. A. W. B. McAuslan, (ed) Urban Legal Problems in Eastern Africa op. cit. P. 126

107 See A Model land Development Code, Tentative Draft No. 5, The American law Institute, march 30th 1973, p.50.

108. J. P. W. B. McAuslan, Urban Law for a Developing World, (A small booklet used as textbook for the LL.M. in Urban Legal administration) University of Warwick, P. 85

109. Ibid.

110. See Land for Human Settlements, U.N. New York, 1977 P. 90

111. J. P. W. B. McAuslan Urban Law for a Developing World, op. cit. P. 94

112. Land for Human Settlement, U.N. op. cit. P. 91

113. See Urban Land Issues and Policies, Vol. 11, 1979 P. 66 quoted in J. P. W. B. McAuslan, Urban Law for a developing World, op.cit. p.96.

114. See U.N. Demographic Yearbook, New York, 1968 PP. 98-103
115. See Grimes Orville F. Jr., Housing for Low-income Urban Families, Baltimore and London, The Johns Hopkins University Press, 1976, P. 43
116. Harrison C. Dunning "Law and Economic Development in Africa" op. cit. P. 1301
117. For more discussion on issues surrounding compensation in England over the years see D. M. Lawrence and V. Moore, Compulsory Acquisition and Compensation, op. cit. especially chapters 11, 12 and 13. See also Sir John Boynton and David J. Hawkins, Compulsory Purchase and Compensation op. cit. Particularly chapters 23 and 24
118. Clarke, H. W., Administrative Law for Surveying Students: Concise College Texts, London, Sweet and Maxwell, 1970 P. 125
119. See Hagman Donald G., Urban Planning and Land Development Control Law, Proceedings of American Society of Planning Officials, 1978, P. 331
120. (1946) 328 U.S. 256 quoted in B. O. Nwabueze, The Presidential Constitution of Nigeria, London, C. Hurst and Company, 1982 P. 521
121. See Decree of August 26, 1948; (1948) Vedomosti Verkhovnogo Soveta SSSR, No. 36 (535) P. 4 quoted in G. W. Kanyeihamba, Law

in Urban Planning and Development in East Africa, Ph.D. Thesis
1974 op. cit. P. 198

122. See J. A. Umeh, Compulsory Acquisition of Land and Compensation
in Nigeria, op. cit. P. 17

123. Ibid P. 19

124. Ibid. See also R. W. James and G. M. Fimbo, Customary Land Law
of Tanzania, op. cit. Particularly chapter XXVIII

125. Public Lands Ordinance, 1876, 3 LAWS OF THE GOLD COAST. CAP 134
Section 3 (Rev. ed 1951) op. cit.

126. Lands Acquisition Act, 1894, e.g., at 3 LAWS OF UGANDA CAP 120
Section 23 (Rev. ed. 1951) quoted in Harrison C. Dunning "Law
and Economic Development in Africa: The law of Eminent Domain"
op. cit. P. 1302

127. Esi V. Warri Divisional Town Planning Authority, Suit No.
M/2/1966 of 20th June, 1969, High Court of Warri (Nigeria)
quoted in J. A. Umeh, Compulsory Acquisition of Land and
Compensation in Nigeria op. cit P. 41

128. Ibid. See also Commissioner of Lands V. Adeleye (1938) 14
N.L.R. 109

129. Ibid

130. See O. O. Akinkugbe, "The Role of Lawyer in Society" in T. O. Elias (ed) Law and Social Change in Nigeria, Lagos, University of Lagos, Evans Brothers Ltd., 1972, PP. 89-105
131. See Section 14, Public Lands Ordinance, 1903, NIGERIA LAWS 1903 No. 5
132. (1923) 4 N.L.R. 18 quoted in T. O. Elias, Nigerian Land Law, op. cit. P. 52
133. (1923) 4 N.L.R. 18 at PP. 22-23
134. Ibid. at PP. 29, 30
135. Ibid at P. 32
136. See Public Lands Acquisition (Amendment) Ordinance. Section 4, NIGERIA LAWS, 1945 NO. 6
137. See Amodu Tijani V. Secretary, Southern Nigeria, (1923) 4 N.L.R. op. cit. at P. 32
138. In Nigeria, for example, the rule that no compensation would be awarded for unoccupied land continued since Independence in 1960 up to the current land use legislation (The Land Use Decree of 1978)
139. Land Acquisition Act, 1967, Tanzania Acts 1967, No. 47

140. Ibid. Section 14

141. The phrase "vacant ground is not defined. It is however stated that land does not cease to be vacant ground only by reason of it having been fenced, hedged, levelled, ploughed, cleared or by reason of its present use as a place of deposit of refuse or waste or as a standing or parking place for vehicles, unless this is "ancillary to adjacent land which is not vacant land or land which is inadequately developed: See Land Acquisition Act, 1967 op. cit. Section 12.

142. See Freehold Titles (conversion) and Government Leases Act, 1963 op. cit.

143. See Nyerere, J. Ujamaa - The Basis of African Socialism (1962), in J. Nyerere, Freedom and Unity - UHURU NA UMOJA, at 167

144. See McAuslan, J. P. W. B., Land, Law and Planning, London, Weidenfeld and Nicolson, 1975, P. 672

CHAPTER FOUR

FEDERAL CAPITAL DEVELOPMENT AUTHORITY, ABUJA, NIGERIA:

CASE STUDY FROM A LEGAL PERSPECTIVE

A number of general theoretical issues and specific points have been raised in the preceding chapters regarding urban planning and development. The world-wide phenomenon of urbanization, bringing about almost a total concentration of growth in the urban segment of the population of many countries, discussed in Chapter Two, suggests not only the enormous problems now facing our urban centres but also points to the urgent need on the part of our various governments to evolve some radical and vigorous policies that are capable of solving such problems. Similarly, the experiences of the British new town development corporations highlighted in the same chapter is a pointer to the fact that urban development corporations represent an institution that provides at least a partial answer to some of the problems of urban development and urban administration. This is why in this chapter we intend to undertake a thorough case study of a specific urban development corporation from a legal perspective.

This chapter is broadly divided into three sections. The first section attempts a brief historical account of Lagos as the main commercial centre and administrative headquarters of Nigeria as well as the events - political factors and socio-economic ills - that led to the decision to move the seat of government of the country to a relatively under-developed Middle Belt Region. Apart from the various social, economic and political factors that militated against Lagos as the capital city of Nigeria, we shall, in this first section, examine,

also in brief, the steps taken by the government in the process of considering the desirability or otherwise of moving the capital from Lagos. Section B examines the administrative and legal framework of the Federal Capital Territory (hereinafter referred to as the F.C.T.). The creation of the F.C.T. and that of an autonomous urban development corporation known as the Federal Capital Development Authority (herein after referred to as the F.C.D.A.) will also be highlighted. This will be done by critically examining the administrative and legal position of the F.C.T. before the law establishing it and the laws and system of administration now applicable in the territory. Section C then concludes the chapter by analysing the powers, functions and limitations of the agency implementing the planning, development and management of the territory - F.C.D.A. This will bring into focus the strengths and weaknesses of the F.C.T. Decree.

SECTION A

HISTORICAL BACKGROUND

Like most of the capital cities in West Africa, Lagos was the place chosen by the British colonial masters as the capital of Nigeria. On the first day of January 1914 (the day the Northern and Southern Nigeria were amalgamated as one united country) Sir Frederick Lugard (later known as Lord Lugard) declared that, "for the present, Lagos would remain the capital of the newly united country"¹. But the African Mail (published in the United Kingdom) hinted the possible removal of the capital to Zaria or Lokoja. The newspaper argued that, "The selection of a new site on neutral ground for the capital of 'United Nigeria' is thus to be warmly commended on various grounds.

Lagos has many claims. But Lagos interest cannot be allowed to dominate the protectorate"² In response to this an outspoken Nigerian newspaper published an editorial comment arguing that, "'United Nigeria' has nothing to lose but everything to gain from Lagos remaining as capital. It would facilitate administration rather than impair it..."³

The above clearly shows that there were mixed feelings both within and outside Nigeria as far back as 1914 regarding the suitability of Lagos as the capital city of Nigeria. This issue did not generate any debate of a constitutional nature until during the London Constitutional Conference of 1953.⁴ At this conference, all the delegations urged Her Majesty's Government to decide on the future of Lagos. The Colonial Secretary then (the Rt. Hon. Oliver Lyttelton) announced that it was the wish of Her Majesty's Government that Lagos should remain the Federal capital of Nigeria and its municipal area should become Federal Territory and be directly under the Federal Government, in these words:

..... Lagos is not only the political capital of Nigeria but also the commercial capital. Above all, it is the biggest port of Nigeria and the port which handles a great part of the traffic with the Northern Region - for when Lagos is being considered in this connection, Apapa, which is part of the municipality of Lagos, must be included.

That being so, I do not feel that a move of the political capital would solve the problem with which we are faced or serve to set at rest the anxieties which the inclusion of Lagos within the Western Region under the present constitution has caused to those who see in it not only the Federal capital of Nigeria but also their principal commercial life-line to the outside world.⁵

The above statement by their Colonial Secretary points to the fact that the colonial administration was never in favour of removing the capital of Nigeria, and indeed that of many of its colonies, from their peripheral locations. As earlier indicated in Chapter Two, the colonial masters viewed such peripheral locations more in terms of the economic and administrative advantages they offered them than for their inherent disadvantages on the socio-economic growth of those colonies.

Soon after Independence, Lagos had many roles to play in the political, social and economic advancement of Nigeria. The rapidly expanding economy of the country by the end of the sixties and early seventies attracted major foreign investors and industrialists. This created numerous job opportunities and increased the rate of urbanization generally and the influx of people into the capital city of Lagos in particular.⁶ The emergence of the country from a civil war in the seventies too had many side effects on Lagos. With the reconciliation and rehabilitation policies that followed in the early seventies there was an unprecedented influx of people into Lagos.

Another major policy decision which contributed greatly towards the inability of Lagos to cope with the rapid rate of urbanization was the creation of more states on the 26th May 1967 by the administration of General Gowon. Decree No. 14 of 1967 (The States Creation and Transitional Provisions Decree) divided the country into 12 states, one of which was Lagos state. According to that Decree, Lagos was going to be both the Capital of the Federation and the Seat of the newly created Lagos State Government.⁷ This dual role obviously meant extra pressure on the limited infrastructural facilities and inadequate public utility services available within the Lagos metropolis and its immediate suburbs.

Soon after the civil war people started agitating for the removal of the capital city to an area free of any Colonial association and emblematic of Nigeria's identity as the world's largest black nation and her power in tropical Africa. A nation-wide debate ensued in the Nigerian press on the suitability or otherwise of Lagos as the Federal Capital.⁸ This aroused public interest and generated various arguments for and against the removal of the capital. Since there were two sides to this issue, we intend to summarise the main arguments of both sides as expressed publicly on the pages of newspapers. For those who maintained that Lagos should remain the capital of the country, the following viewpoints emerged:

- (a) Lagos has served as capital of Nigeria since 1914 and there have been established there historical ties and landmarks of Nigerian history;
- (b) it would not be economically feasible to develop a new site without enormous expense;
- (c) the site of Lagos is attractive to tourism, being located in a nest of lagoons and beautiful sea beaches;
- (d) the removal of the Federal capital is a constitutional issue which requires a referendum;
- (e) the Federal Military Government should not dabble in this exercise now, but should confine its attention to development problems, leaving the issue of Federal capital, to a future civilian regime.⁹

In advancing their argument, the protagonists of the status quo insisted that apart from the heavy financial burden the country would incur in building a new capital the government might face some serious political problems in excising a territory from any of the existing states in the Federation.¹⁰

The views of those who were strongly opposed to the idea of retaining Lagos as the Federal capital were mainly based on the following points.

- (a) Its site makes it vulnerable from a security point of view;
- (b) As capital of Lagos State, it leads to duplication of laws and conflict of authority between the State and the Federal governments.
- (c) The population explosion and traffic congestion in Lagos make it unsuitable as a modern capital city.
- (d) The climate of Lagos is too hot for any social or economic activities.
- (e) Shifting the capital to another place might not involve heavy financial commitment as those against it try to exaggerate.¹¹

The argument on vulnerability to external aggression was mostly based on the fact that Nigeria was becoming more influential and

playing greater role in International politics and as such may be obliged to take certain decisions which might invite Military measures from other countries. In the event of such a thing happening, Lagos would have lost its importance as a capital city. There was also lack of planning and its consequences in Lagos. It was argued that "Topographically, the lateral expansion of Lagos Island is limited by the swamps, the creeks and lagoons. The geographical situation vis-a-vis accelerating development in urbanisation is now making Lagos a congested micro-conurbation while replanning and environmental development lag behind".¹²

These arguments went on for a long time with each side coming out with counter arguments. For instance, on the argument regarding over crowding and lack of land for expansion, it was pointed out that the mainland of Lagos afforded limitless opportunity for expansion, particularly areas like Ajegunle, Apapa and Ikeja. As for Lagos being vulnerable to external aggression, this was dismissed as irrelevant to modern warfare, in which any country could be attacked by air, land and sea operations by guided missiles.¹³

It can be seen, from the foregoing discussion that, there was a widely shared desire among the citizens of Nigeria to review the position of Lagos as the capital of Nigeria. This realization was not only limited to the ordinary man on the street. By the mid-seventies there was a general feeling, both within the official government circles and the general public, that Lagos was rapidly industrialising and that there was the need to tap the vast potential of the rich hinterland. For instance, while exchanging views with the West German Ambassador to Nigeria, the former Military Governor of the defunct

North-Central State, Brigadier Abba Kyari, disclosed that the issue of a new Federal capital would be referred to the next constitutional conference.¹⁴ Also a former Federal Minister, the late Dr. J. S. Tarka agitated for the establishment of a new capital city in the plateau region in 1973.¹⁵ This thorny issue of new capital for Nigeria became an issue of serious consideration all over the country at the end of 1972 when the then Head of State General Yakubu Gowon, while speaking at the convocation ceremony of Ahmadu Bello University, appealed to the people of Nigeria in general and the academic community in particular, to debate with decorum what he referred to as "a number of vital and controversial issues among which are the question of educational imbalance and the quota system of admission, cultural revival and revolution, Lingua Franca for Nigeria; the location of the capital of the federation; the future constitution and governmental insititutions of the country...."¹⁶

The above declaration by a person of no less importance than the Head of State naturally generated more debate on the issue. But despite the tempo then and the practical problems in Lagos the call for the removal of the capital from Lagos remained unfulfilled. It is however important to note that before one can fully understand or appreciate the prevailing atmosphere of indecision on the part of the authorities regarding this issue, one needs to be in the full picture of the political history of Nigeria. In a country like Nigeria with so many ethnic groupings and so much regional loyalty¹⁷, it is impossible to dismiss political, social and historical prejudices in considering such a thorny issue as the relocation of its capital city. So, the people of Nigeria continued to face many urban problems in and around Lagos but the issue of moving the capital became so much a political issue that any attempt to shift the capital was likely to be seen by some people as favouring a particular section or ethnic group against the others.

It was against this background that the Murtala Muhammed administration emerged through a bloodless counter coup by the armed forces on the 29th July 1975. In his inaugural address to the first meeting of the Supreme Military Council (hereinafter referred to as SMC) on the 5th August 1975 the Head of State had this to say among other things:

.... As to the question of a Federal capital, you are no doubt aware of the many problems that have arisen from the city of Lagos serving as the dual capital of both the Federal government and the Lagos State government. Some of these problems have proved intractable, and there have been persistent suggestions that, as Lagos seems unable to accommodate both Governments, either the Lagos State Government or the Federal Government should move its capital elsewhere. The issue has to be examined closely and in all its perspectives to ensure that the best decision on it is taken. It is believed that the body of knowledgeable men to be set up, assisted by contributions from the public at large, will be able to make useful recommendations to the Federal government.¹⁸

The Committee on the Location of a New Capital:

Findings and Recommendations

The first positive step taken in order to fulfil the above commitment was the establishment of a panel¹⁹ on the location of the Federal capital by the Military authorities on the 9th August 1975. This Panel had seven members²⁰ and was under the chairmanship of Justice T. A. Aguda, a prominent Nigerian judge and a distinguished scholar. The main task of this seven man committee was to study the sensitive issue of a new capital city for Nigeria and advise the Federal Military Government based on the following terms of reference:

1. To examine the dual role of Lagos as a Federal and State capital, and advise on the desirability or otherwise of Lagos retaining that role.
2. In the event of the committee finding that Lagos is unsuitable for such a role, to recommend which of the two Governments (Federal or State) should move to a new capital.
3. In the event of the committee finding that the Federal capital should move out of Lagos, to recommend suitable alternative locations, having regard to the need for easy accessibility to and from every part of the Federation.
4. To examine all other relevant factors which will assist the Federal Military Government in arriving at the right decision.
5. To submit its recommendations to the Federal Military Government not later than the 31st of December 1975.²¹

This committee undertook an extensive tour of all the twelve states of the Federation and some African and overseas countries that had reasons to relocate their capital cities in the past. It was after collecting written memoranda and oral opinions from governments, various bodies and organisations as well as individuals that the committee finally came out with a report dated 10th December 1975. This report was submitted to the Federal Military Government accordingly. It is not feasible to reproduce the various findings in specific terms and the recommendations in every detail here but suffice it to say that the Committee did recommend the removal of the

Federal capital from Lagos to a vast land south of Abuja, a town in the North-Western part of Nigeria.²² The area recommended is about 8,000 sq. kilometres. This is about twice the size of Lagos State as a whole. Among some of the points the panel highlighted in favour of this particular area are, good climate, population density, central geographical location and ethnic neutrality. In order to fully convey the message we may recall the exact words of the panel:

It is needless for us to re-state the obvious - that we are in the process of building a nation of the many 'nations' which occupy the geographical area of land known as Nigeria. It is our belief that one way for forging the idea of unity of this nation is building a capital city which will belong to every Nigerian, where every Nigerian will be assured that he has an opportunity to live in parity with every other Nigerian, and where no Nigerian will be regarded either in law or on the facts as a Native Foreigner.²³

The above submission was fully endorsed by the Federal Military Government where in accepting the panel's findings and recommendations the government made the following observation"

..... a centrally located Federal capital in a spacious area with easy access to all parts of the Federation would be an asset to the nation and would help in generating a new sense of national unity".²⁴

It is therefore clear that, from the recommendation of the panel and the final decision of the government, the physical location of Lagos was taken into account. A simple glance at the map of Nigera shows how Lagos is located at the southern end of the country and just next to the sea. (see Figure 1, map of Nigera showing the old and the new capital territory). This not only makes room for future expansion unavailable but also makes Lagos most vulnerable to attack by sea and

air. On the other hand, the newly demarcated area for the capital territory, as can be seen on the map, has free and open land with inlet and outlet roads in every direction. Being close to the major administrative centres and state capitals of the country, the new capital territory will easily establish links with all parts of the Federation in terms of communication and transportation.

One important point worthy of our attention is the fact that, despite all the advantages that this newly demarcated area has and despite the corresponding disadvantages of Lagos there were some Nigerians, individuals and interest groups, who were strongly opposed to the idea of removing the capital away from Lagos. It is an elementary rule of democracy, anywhere, that even though the majority may have its way, the minority must be heard. In compliance with this basic principle, the committee on the location of the capital city made sure that it gathered and treated all shades of opinion with due attention and consideration. Most of those who opposed the idea of removing the capital from Lagos did so on grounds of cost. For instance, the official memorandum submitted by the Western State Government (now consisting of three states i.e. Oyo, Ondo and Ogun) was totally against the entire proposal to move the seat of Government from Lagos. Their main point of contention was that the new capital would amount to an expenditure of a huge sum of money which the nation could not afford. They saw the proposal as a serious threat to the economy of the nation and as such quite unnecessary and uncalled for. The Panel, while commenting on this particular point raised by the then Western State Government reproduced a memorandum written by an economist, who wishes to remain anonymous, to serve as a reply to the opinion held in certain quarters that the whole exercise was economically unwise. The memorandum goes thus:"

FIGURE 1: MAP SHOWING THE OLD AND THE NEW CAPITAL TERRITORY

FIGURE 1 MAP OF NIGERIA

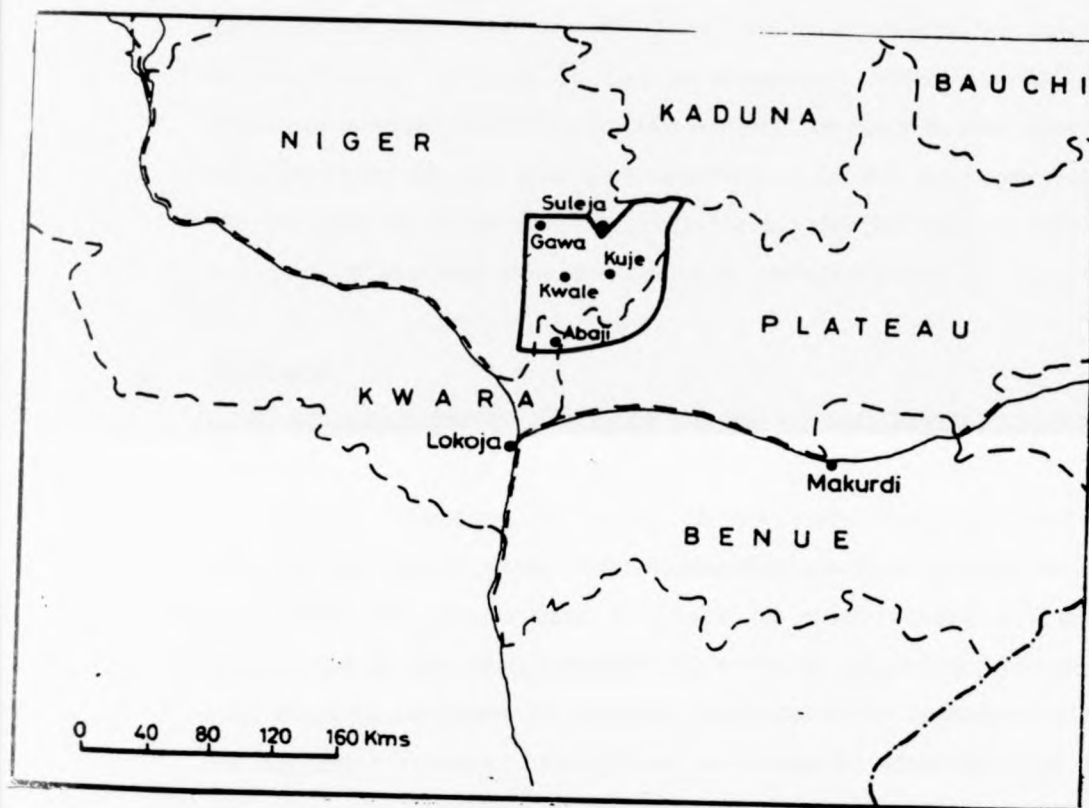


SOURCES: Master Plan for Abuja

The argument that colossal sums of money would be involved in building up a new capital is attractive but unconvincing. In fact, it is my conviction, shared by many domestic and foreign economists, that our planning for economic growth should begin with replanning some of our major cities and resettling our population. It is difficult to develop effectively many of the hamlets and homesteads in the East-central state and the scattered long distance separated towns and huts of the Northern States without first resettling many of their inhabitants into new towns. The money spent on such resettlement may be regarded by the undiscerning as colossal and wasteful but the end product is more economical than to leave things as they are. The number of man-hours now being lost in the Lagos traffic, the human cost and the unnecessarily high cost of providing services in Lagos will in the immediate run (not waiting even till the long-run) be more costly than to develop a new Federal capital. Gradually Lagos will grind to a halt and suffocate. We shall then have to move out of it to find a Federal capital, no matter what decision we take today against the obvious fact. Then, the cost of moving will be several-fold of today's cost. We would have lost not only valuable time but also incurred economic costs in men, money and materials.²⁵

What this economist is saying, in other words, is that he is not unaware of the financial requirement of a project of that magnitude, nor is he unmindful of its impact on the overall economy of the nation. He only tries, in his memorandum, to draw the attention of the government and people of Nigeria to the fact that they should not regard the project as what they want but it should be seen as what the nation and its people need most urgently. This memorandum has both provided a concise summary of the most salient problems in Lagos and the need to have them solved once and for all. Thus, his analysis completely disagrees with those who felt that the country could not afford 'the luxury' of building a new capital. So, at last, the panel recommended and the government accepted that the capital city of Nigeria be moved out of Lagos to a vast area of land carefully carved out from the three States of Niger, Plateau and Kwara (see Figure 2 - Map showing the three States affected).

FIGURE 2 : STATES INVOLVED IN THE F.C.T.



SOURCES: Master Plan for Abuja

There is no doubt that the implementation of a project of this size and importance raises a number of complex administrative and legal issues. This is why we intend, in the next section of this chapter, to examine some of these crucial issues as well as the steps taken by the government to solve them. We would examine the creation of the F.C.T., the area of land so demarcated and the people that inhabit the area. Particular attention will be paid to the laws and administrative systems that were operational in this area long before the decision to build a new capital there, and the applicability or otherwise of the same laws and system of administration.

SECTION B

LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE FEDERAL CAPITAL TERRITORY

After accepting the report of the Aguda Panel and carefully considering the findings and recommendations therein the Federal Government was faced with the task of establishing the basic administrative and legal framework to serve as a necessary foundation upon which to implement the planning development and management of the new capital territory. As a first step towards achieving this goal the government issued a White Paper on the official views of the government taking the following major decisions:-

1. All the land in the agreed Federal territory will be vested in the Federal Government.
2. The indigenes of the area affected currently inhabiting the area are to be resettled in new places of their choice outside the capital territory at the expense of the Federal Government.

3. The planning and developing of the Federal territory is to be implemented over a period of ten to fifteen years; it is expected that once the movement of the Federal Government from Lagos is commenced, it should be completed within two to three years.

4. The Federal capital city should be made to develop naturally and the temptation to create an artificial city should be resisted.

5. An autonomous agency like a Capital Development Authority will be established and be charged with the responsibility of planning, developing and managing the new capital.

6. Compensations would be paid for economic trees and other developed immovable properties in the territory. No compensations would however be paid for any development carried out in the territory after the promulgation of a Decree establishing the territory.

7. The law establishing the capital territory and the agency responsible for its development will be incorporated into the 1979 Nigerian Constitution under preparation.²⁶

THE CREATION OF F.C.T. AND F.C.D.A.

The next positive step taken in this direction was the promulgation of a Decree by the Federal Military Government (Decree No. 6 of 1976) establishing an area of land described and demarcated in the schedules to the Decree as the capital territory of the Federal Republic of Nigeria and a capital Development Authority consisting of a chairman and eight other members²⁷ (see Appendix A). Under this

Decree, the F.C.D.A. is a body corporate with perpetual succession and a common seal.²⁸ This authority is charged with, among other things, the responsibility for:

(a) The choice of a suitable site for the location of the capital city within the capital territory;

(b) The preparation of a master-plan for the capital city and land use with respect to town and country planning within the rest of the capital territory;

(c) The provision of municipal services within the capital territory;

(d) The establishment of infrastructural services in accordance with the master-plan; and

(e) The coordination of the activities of the Ministries, departments and agencies of the government of the Federation within the capital territory.²⁹

The above list of responsibilities that fall on the shoulders of the F.C.D.A. by virtue of this Decree shows that the tasks of this agency are many and varied. They range from planning to development and to the actual management of the entire Federal capital territory. The functions and powers of this agency are also clearly set out in this Decree. We shall later, in this chapter, examine these functions, the powers and their limits in the light of this Decree, but before then, let us examine the legal position of the

Federal capital territory in terms of its defined boundaries and general administration.

The F.C.T.

As already explained, one of the steps taken to ensure that the F.C.T. has the necessary legal backing it requires was the decision by the government to incorporate the Decree establishing both the F.C.T. and the F.C.D.A. into the 1979 Constitution that was under preparation.³⁰ The Constitution provided for the Federal capital territory and defined its exact boundaries in Part II of the first schedule.

Having got the exact area of land defined as the new Federal capital territory, we may now proceed to consider its physical features, people and the pattern of administration governing their lives and properties.

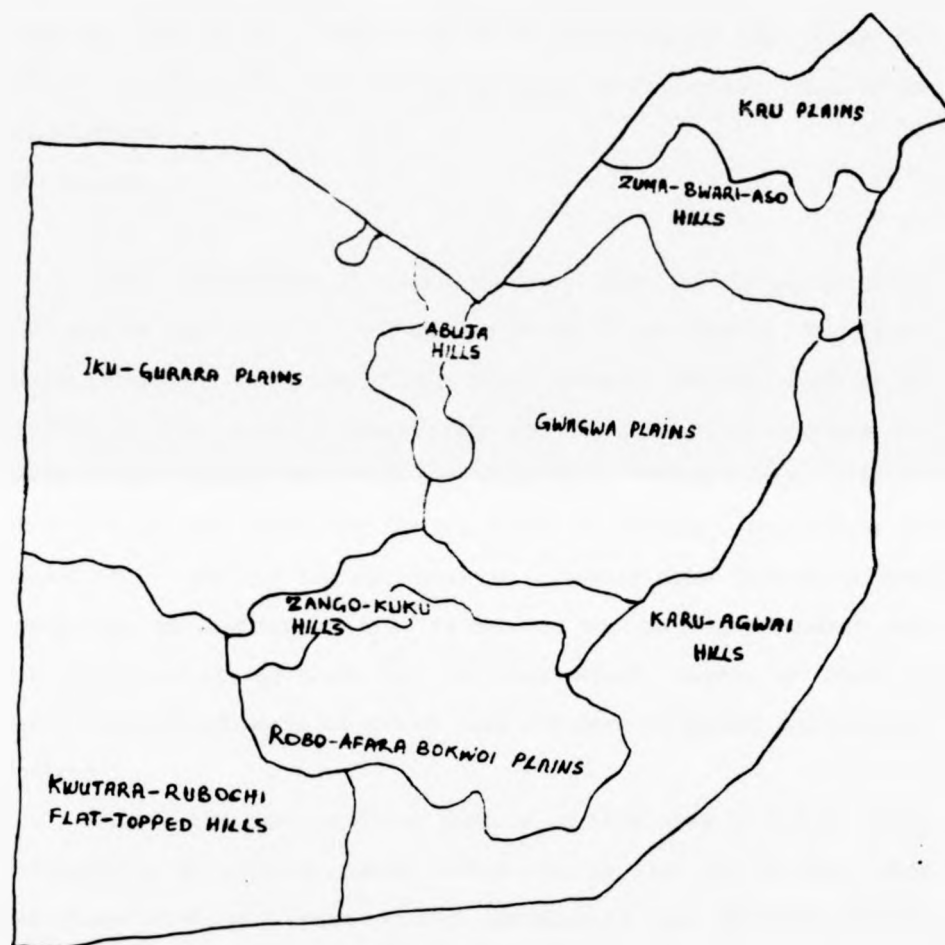
Physical Features

This area can be broadly divided into two major parts in terms of its physical features, namely, the Plains and the Hills (see Figure 3).

The first part consists of the Gwagwa, Kau, Iku-Gurara and the Robo-Afara-Bokwoi Plains and the second part consists of the Abuja, Zuma-Bwari-Aso, Zango-Kuku, Karu-Agwai and the Kwatara-Rubochi Hills (IPA 1978).

The Plains are gently undulating with isolated steep-sided hills and other rock outcrops of various sizes. Park Savanna dominates the landscape of these plains with patches of light forest and woodland

FIGURE 3



NATURAL REGIONS OF THE FCT

Source: A new Federal Capital for Nigeria
Report No. 2. Site selection and site
evaluation (IPA, 1978).

varying in density and composition. Cultivation and grazing are the major land uses. These land uses however vary in comparative degree between the plains.

The Hilly areas have a varying topography. As figure 3 shows, some areas are defined by high tectonic ridges (e.g. in the Zuma-Bwari-Aso Hills). Other areas have discontinuous high hills with undulating plains from which rise isolated smaller hills (e.g. in the Abuja Hills).

The People

The inhabitants of this territory live in big agricultural villages of various sizes and smaller units of settlements. The bigger units (villages) where the village heads normally reside, serve as the nuclei of the rural communities and distribution centres for agricultural inputs when they are available. These bigger villages usually have facilities for various kinds of services, provisions and marketing.³¹ Most of the villages, particularly those located on good roads, are multi-ethnic. This is because the satellite hamlets that are scattered around these big villages depend largely on them for various goods and services and as such are seen as market and shopping centres.

Perhaps the most striking feature of this area (F.C.T.) is the multiplicity of ethnic groups living side by side one another. This particular feature becomes obvious immediately upon entering certain villages where diverse patterns of housing are seen, ranging from walled compounds of mud of the typical Hausa style, to the round huts of the Gwari and the rather large grouping of huts of the Bassa tribes men.

Administrative Structure

Long before the creation of the F.C.D.A. and the subsequent declaration of the area of land that now constitutes the F.C.T. as a

single politico-administrative entity, there had been, in that area, a traditional authority system organized in a loose hierarchy running from the District Heads to Village Heads, and to Ward and Hamlet Heads. This system of local authority prevailed in all the three States (Niger, Plateau and Kwara) parts of whose territories were merged to form the F.C.T. These traditional local authorities were performing customary, political, cultural and administrative roles at the local level. We have however, noticed, with respect, that these traditional local authorities received no attention in either the Regional or Master Plan prepared for the F.C.D.A. This, to our mind, amounts to a very serious oversight. It is serious for two important reasons:-

First of all, for a vast number of the inhabitants of the F.C.T. there is only one authority that directly and immediately affects their lives and properties, namely, the traditional local authority. Particularly important in this case are those authorities that serve at the very base of the hierarchy - that is, Ward and Hamlet Heads. Although there are higher authorities that perform important administrative roles in many rural parts of Nigeria (such as the new F.C.T.), the rural population often refer their disputes and other personal/family problems to these traditional local authorities in the first (and mostly final) instance.³² Secondly, since the inhabitants of the F.C.T. were under the jurisdiction of three separate state governments, we hold the view that, the physical plans designed for the territory ought to have given full attention to vital issues such as:

- (i) The social and political implications inherent in merging various communities that were hitherto under separate jurisdictions;

- (ii) Identifying existing authority patterns in the territory with the view to setting up adequate administrative machinery that is capable of bringing all the various ethnic units within a single governmental authority; and,
- (iii) Identifying the welfare needs of these various communities and making appropriate plans for their future growth and development.

Were these and other related issues fully reflected in the Master Plan, such a Master Plan would have most certainly provided not only a sound foundation for physical planning and land use within the territory but also a basis for the administrative inter-relationship between the central government and the authorities at the grass root level.

We may now proceed to give a brief description of the structure of the traditional local authorities that existed in the F.C.T. prior to the advent of the F.C.T. Decree. The discussion here is based on the personal knowledge of the author, who comes from one of the Local Government Areas affected by the F.C.T. Decree³³ and on first hand information obtained in the course of a field research conducted by the author in the F.C.T.

Hamlet and Ward Heads:

Most of the big villages within the F.C.T. are in what one may call sub-units. These units, in almost all cases, coincide with the ethnic composition of the settlement. The Chief or Ward Head of each

ethnic group is selected strictly in accordance with its customary practices. It is however important to note that there are some big settlements within the F.C.T. without an overall chief. This is mostly found in areas where there are many tribes with almost equal population and with no strong claim for being the first tribe to settle there. For instance, the author was surprised to discover that, although Gwagwalada village is one of the most populous settlements within the F.C.T. there is no one in that village recognized as the chief.³⁴ Originally Gwagwalada was under the Pai Village Head whose actual place of residence was in the Hausa Ward in Kwali. What obtains in Gwagwalada is a situation whereby the various communities and wards have their own chief. The Hausa-Fulani for instance, have their own chief, the Gwari and Gade tribes too have their Ward Heads. Even the Ibos and Yorubas who are relatively few in number have their own leaders. These ward and community heads are responsible for collecting taxes from their own people living in Gwagwalada village for onward transmission to the District Head. Apart from tax and revenue collection these Ward Heads are responsible for settling various disputes among their own people. In a situation where there is a chief recognised as the Village Head, the Ward Heads can, and do, advise him on general affairs relating to peace and stability within the people in the village.³⁵

There are a few surrounding hamlets that fall directly under the jurisdiction of each Village Head. The head of each hamlet performs the same broad functions and is chosen in the same customary manner as the Village Head. Messages from the local government are relayed to the people through periodic meetings between the District Head and the Village/Hamlet Heads. This same channel is used to convey the views

and problems of the people of the rural areas to the local government. From this structure of authority, we can clearly see that the ordinary person at the grass root level within the F.C.T. sees the Hamlet/Village Head as the immediate and legitimate authority. This structure is common in almost all the rural parts of Nigeria.

District Level

As far as the District level is concerned, there are few variations in the administrative pattern within the F.C.T. We intend to discuss only a few selected districts located entirely or partially within the F.C.T.

Bwari District:³⁶

In the olden days, District heads in this area were selected mainly on the basis of personal achievements, such as bravery in battlefield, hard work and excellence. However, the Emir of Suleja (former Abuja Town) moved the District Headquarters from Dikko to Bwari in 1967 and appointed the District Head from the Suleja royal family after due consultation with the emirate council. This move was resisted by the indigenes of the District and their local leaders. They insisted that the selection of District Head must be based on merit and that the person to be appointed must be an indigene of the area, i.e. Bwari. Thus a new system of selection was introduced in Bwari in 1976, whereby the District Head is chosen through the votes of all the village heads in the District and not by the Emir of Suleja. The present District Head was elected by the votes of 7 Koro village heads.³⁷

Karu District:

This District was formerly part of Keffi local government in Plateau State. The District Head here has dual status. He is, in addition to being the District Head, the chief of Karu village. There are two ruling houses in Karu and the chieftancy alternates between them. The ruling houses are (i) Narai House and (ii) Baba House. There are five traditional kingmakers according to the Gwari customary rules for selecting a new chief. When a new chief is selected from the eligible members of the ruling house next in line, his name is forwarded to the Keffi Traditional Emirate Council for formal deliberation and recommendation to the Plateau State Governor for approval.³⁸

From the methods of selection and appointment of District Heads in these two areas, we can see that the selection process are different., Thus, though Bwari and Karu Districts now form part of the F.C.T. they have different customary rules regarding the selection of their chiefs. Also while an aspirant to the throne in Karu must come from one of the ruling houses, any adult in Bwari who is an indigene and who possesses certain distinguishing merits is eligible to be selected as the District Head.

As far as their functions are concerned, most of the District Heads within the F.C.T. were mainly concerned with tax and revenue collection and informal dispute settlement (or maintaining harmonious relations). They also served as a conduit of information which the local governments wish to communicate to the people at the grassroot level.

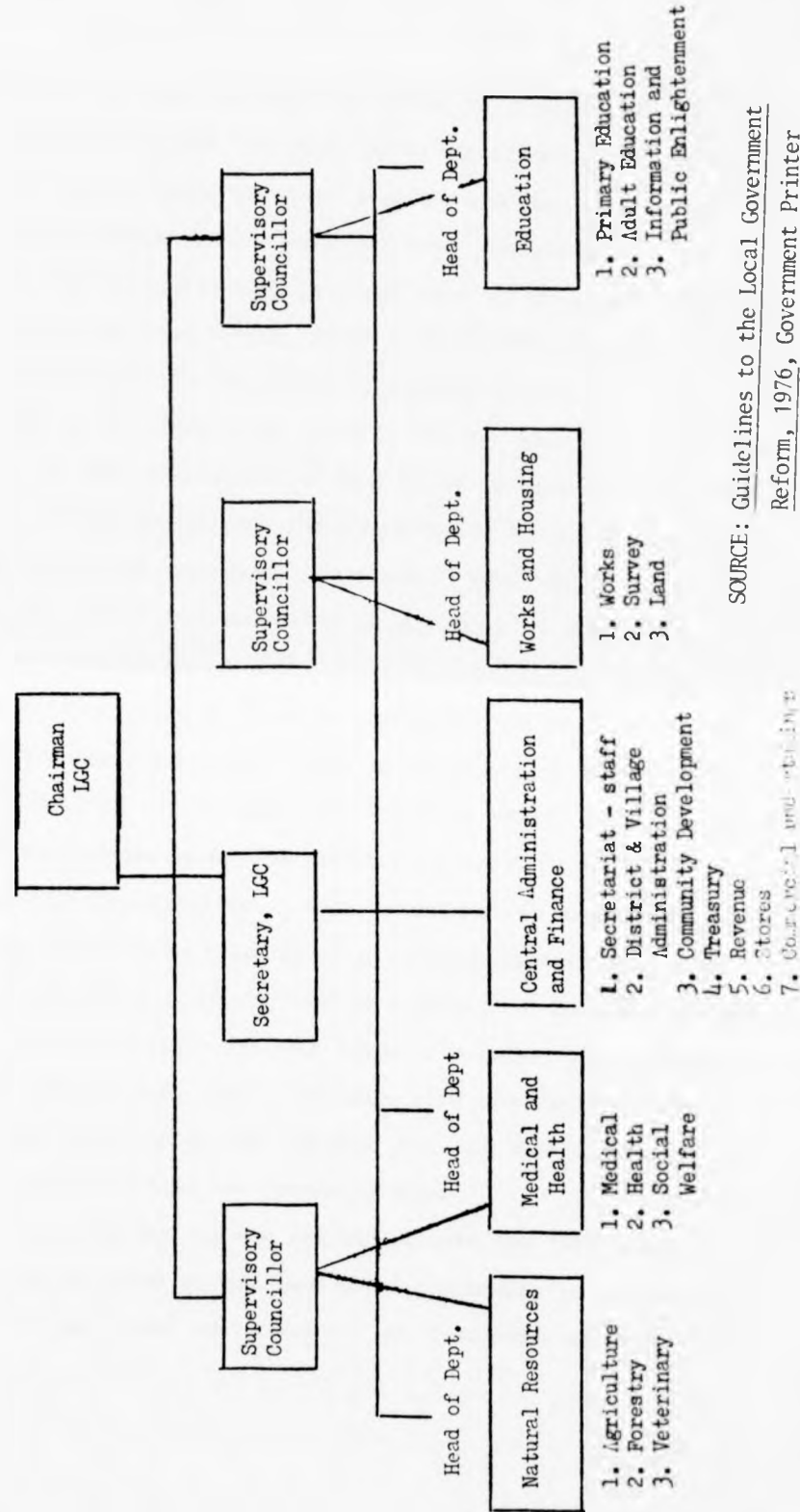
Local Government Level

There were similarities in the structure of the local Governments in the three states affected by the creation of the F.C.T. These similarities were rooted in their common heritage of the Northern Regional Administration dating back to the colonial period. The 1976 Local Government Reform eventually brought about a uniform system of administration at the Local Government Level throughout the country. Figure 4 shows the organisational structure of all local Governments in the country. This was the situation prior to the decision to move the capital to the present F.C.T.

We may now proceed to examine steps taken by the Federal Government in the process of creating the F.C.T. to ensure that proper administrative and legal frameworks were laid down. It is quite clear that there could not have been a better legal safeguard than the incorporation of the exact geographical definition of the area of land demarcated as Federal capital territory into the Constitution of Nigeria. As the supreme law of the country the Constitution prevails over all other legal provisions and has binding force on all authorities and persons throughout the Federation. Also, as can be seen from Figure 1, maps of Nigeria and Africa, the setting of the F.C.T. has some relevance to the geography of the country. This particular portion of land is not only geographically central to Nigeria but also has the potential of making the capital an area of international importance due to Nigeria's role in world affairs. Its central location is the most significant feature that makes it a natural magnet to international commercial political and diplomatic

FIGURE 4

STRUCTURE AND FUNCTIONS OF LOCAL GOVTS.



SOURCE: Guidelines to the Local Government Reform, 1976, Government Printer Lagos, Nigeria.

institutions. It was, perhaps, in order to ensure that the new capital performs this role and develops in accordance with government official policies and programmes for planning and development that the F.C.T. Decree provided certain essential legal frameworks.

Section 1(3) of the Decree, provides that the area shall, as from the commencement of that Decree, cease to be a portion of the states it was a component of and shall thenceforth be governed and administered by or under the control of the government of the Federation to the exclusion of any other person or authority whatsoever. This same section confers on the Federal Government the absolute ownership of the lands comprised in the capital territory. This provision of the Act was fully incorporated in S.261(2) of the 1979 Nigerian Constitution.

One important point we need to clarify is how the capital city came to acquire the name Abuja. This is because many people confuse Abuja - the capital city - with the F.C.T. - which is the entire portion of land demarcated and defined in Part II of the first schedule to the constitution. This confusion is understandable because Abuja had been an existing local Government area long before the decision to select a virgin land very near this town as the new site for a capital city. It was after a careful survey of the territory by the F.C.D.A. that a suitable site was found within the F.C.T. and the name Abuja was adopted for the new city and the neighbouring old Abuja town was renamed Suleja.

We may now consider the way and manner this new territory is to be administered in terms of the laws to be applicable in the process of building a new urban environment. As indicated earlier, this

territory was carved out of three different states with varying cultural and historical backgrounds and, to some extent, with variations in the laws that govern their lives and properties. The curious question here is, which of these three states will enjoy the honour and privilege of having its laws applicable in the capital territory? Finding an acceptable answer to this question becomes more pertinent when considering the provision of S.263(2) of the 1979 Nigerian Constitution:-

The provision of this constitution shall apply to the Federal capital territory as if it were one of the States of the Federation, and accordingly:

- (a) All the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a state and in the courts of a state shall, respectively, vest in the National Assembly, the President of the Federation, and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory.

Also S.264(d) provides that:

References to the chief Judge and Judges of the High court of a State were references to the chief Judge and Judges of the High court, which by operation of this part is established for the Federal Capital Territory; and

S.264

- (e) references to persons, offices and authorities of a State were references to the persons, offices and authorities of the Federation with like status, designation and powers, respectively, and in particular, as if references to the Attorney-General, Commissioners.... of a State were references to the Attorney-General, Ministers of the Federation with like status, designation and powers.

ADMINISTRATION OF LAW IN THE F.C.T.

In order to identify the nature and exact limit of legal provisions that are to be relied upon in the day to day administration

of the F.C.T. we must refer to S.13 of the F.C.T. Decree. This is the section that purports to make transitional provisions as to the administration of laws within the F.C.T. The section has made two basic legal provisions which are:

- (i) That all laws applicable in the F.C.T. immediately before the commencement of the Decree shall continue to apply in the F.C.T., and
- (ii) That all persons or authorities concerned with the administration of such laws shall continue to administer them until other legal provision is made in that behalf by the government of the Federation.

Our first major observation here is that there is in existence a fundamental contradiction and conflict between sections 1(3) and 13 of the F.C.T. Decree. First of all, Section 1(3) has provided in very clear terms that the area of land contained in the capital territory, as from the commencement of the Decree, shall cease to be a portion of the States from where it was carved, and that the area shall thenceforth be governed and administered by or under the control of the government of the Federation to the exclusion of any other person or authority whatsoever. We find it difficult to reconcile these provisions with the provisions of S.13 which declares that all laws applicable in the F.C.T. immediately before the commencement of this Decree shall continue to apply in the territory and all persons or authorities concerned with the administration of such laws shall continue to administer them until other provision is made in that behalf by the government of the Federation. There is however one

possible way of reconciling these two provisions. That is, by allowing the various states officials and institutions to continue to exist within the F.C.T. and making them answerable to the Federal Government. This too may pose a number of practical problems.

The provisions of S.13 of the F.C.T. Decree are, in our opinion, too theoretical. On the strength of S.1(3) of the F.C.T. Decree and indeed, by virtue of sections 262, 263 and 264 of the 1979 Nigerian constitution, the F.C.T. is a special and clearly defined area of land which has a separate status from other states of the Federation. Bearing this in mind, we can see that any attempt to subject the territory to laws applicable in other states would create practical problems. Similarly, any legal provision purporting to subject the territory to laws applicable elsewhere is null and void. It is null and void in the sense that it is in direct conflict with the provisions of the constitution cited above. Our submission may be clearer if we illustrate it with one or two instances. Let us take, for instance, the law of taxation. The basic principle of assessment is based on the fact that the tax-payer is resident in the particular area on the assessment day. Secondly such a tax-payer must enjoy the amenities and facilities for which he is taxed. In this hypothetical example we are proposing, Mr. A. is resident in Gwagwalada village which is within the F.C.T. Also all the basic social amenities he enjoys are provided by the Federal Government. In such a case it would be ridiculous to apply the Niger State Law of taxation when assessing the amount payable by Mr. A as a tax. If the tax assessing officer were to apply the Niger State tax law simply on the grounds that Mr. A is now resident in Gwagwalada and since the village of Gwagwalada was part of Niger State and the law applicable, in tax matters, in that area immediately before the commencement of the

F.C.T. Decree was the Niger State tax law, that would contradict the whole concept of taxation - paying for the amenities or services rendered by a particular authority. In the case of Mr. A the Federal Government is the appropriate authority and accordingly, the most appropriate law applicable is a Federal tax law. Section 13 of the F.C.T. Decree would therefore bring about many practical difficulties.

Because of the loophole created by the contradiction between S.1(3) and S.13 of the F.C.T. Decree there has not been any organised formula for tax collection within the F.C.T. Our investigation in the F.C.T. shows that the Federal Government does not have any machinery for tax collection in an area that has been declared a Federal capital territory. All the revenue being collected from health centres, agricultural extension services and similar organisations within the F.C.T. are paid into Government Sub-treasury wholly owned by the Niger, Plateau or Kwara State government depending on what part of the F.C.T. the revenue comes from.³⁹ Thus, not only would these states continue to apply their own tax law but also they would continue to collect taxes from the inhabitants of this area.

The second arm of this section (S.13) further goes to provide that all persons or authorities concerned with the administration of such laws shall continue to administer them. In the absence of any clear explanation in this proviso, we may safely presume that all the "persons or authorities" referred to include Magistrates and Judges and the Magistrate courts and High courts respectively. By necessary implication, these represent, to our mind, what has been referred to as "persons and authorities concerned with the administration of the

law". There are two important issues that arise here. First of all, there are no courts, (Magistrates or High Courts) established and no judges appointed by the Federal Government for the purposes of dispensing justice within the F.C.T. The issue that necessarily arises here is, who are the exact persons or authorities concerned with the administration of such laws within the F.C.T.? Are we to suppose that all the magistrates and judges in Niger, Plateau and Kwara States jointly constitute "the persons or authorities" who are to administer the laws of these three States in the F.C.T. Neither the F.C.T. Decree nor the Constitution made any clear and categorical provision to that effect. This situation, we must observe, does not help to clarify things. Instead it has made matters worse. How, for example, can we expect a person who commits a crime in Abaji village (formerly part of Kwara now in the FCT) to be tried by the High Court in Minna? This will amount to neglecting the fundamental principles of criminal jurisdiction. In both municipal and accepted international law the basis for jurisdiction is territorial. If an offence is committed within the F.C.T. it should be tried by a competent court within the FCT and not by Niger, Plateau or Kwara State Magistrate or High Court (S.4(1) Penal Code Law, 1959). But unfortunately, that is exactly what happens now within the F.C.T. All suspects within the F.C.T. are tried by a Suleja Chief Magistrate Court and all fines paid into Suleja Government Sub-treasury which goes directly to the Niger State Government. This clearly shows that the administration of justice within the F.C.T. is conducted by the Niger State. Also in view of the fact that the basis for jurisdiction in criminal matters is territorial, we are of the opinion that no court in Suleja or indeed anywhere outside the F.C.T.

is competent to try people charged with offences committed within the Federal Capital territory.

Considering the provisions of S.14 of the FCT Decree, one would have expected the Federal Government to establish courts of law, appoint judges and make regulation for the general administration of the F.C.T.⁴⁰ Unfortunately, neither the Military Government that enacted the Decree nor the subsequent civilian administration made any regulation or pass any bill in the National Assembly to provide for the general administration of the F.C.T. The inevitable result of this has been confusion and an uncoordinated pattern of administration of law within the F.C.T. This assertion necessarily leads us to a discussion of the steps taken by the F.C.D.A. to install a unified and effective system of general administration within the F.C.T. We may therefore examine the present system of administration and the laws, regulations and orders currently applicable in the various administrative units within the F.C.T.

UNIFIED SYSTEM OF ADMINISTRATION AND THE APPLICABLE LAWS IN THE F.C.T.

The F.C.D.A. selected and commissioned the International Planning Associates (IPA) of the U.S.A. in June 1977 for the technical planning and the production of a master-plan for the new capital city. A Master-Plan is undoubtedly the first and most fundamental step worth taking in order to provide a general framework for development with which planning for various systems and sectors can continue. Thus, the F.C.D.A. sought to obtain a Master Plan which focusses on key urban development and operational issues, and coordinates land use,

transportation, infrastructure, housing and the like. After the Master-Plan and its report were carefully reviewed by the F.C.D.A. Board, the F.C.D.A. technical staff and officers and several other advisory panels, the Federal Government finally approved it officially in February 1979⁴¹. It is however important to observe here that the Federal Government neither enacted any legislation to provide the Master-Plan with the necessary legal backing it requires nor published its approval of the Master-Plan in a Federal Government official Gazette.

Soon after the government officially approved the Master-Plan, the F.C.D.A. embarked on a programme to test the Master-Plan. To this effect, an area was selected on the outskirts of the central area of the territory for immediate development. The F.C.D.A. consultants - Milton Keynes, N.T.D.C. - were asked to complete the site development and layout plan. The aim of the F.C.D.A. was to have the city built in a number of phases. The first area which was selected was meant to be the area which would receive an accelerated development. This area was officially named as "The Accelerated District" within the F.C.T.⁴² This particular district is one of the four residential areas which make up the first phase of the city's development. This is a very significant area because it represents the place where progress on the planning and development of the new capital will be tangibly demonstrated and assessed. It is also the area that will generate the much needed impetus for further detailed planning and development on other sites within the F.C.T.

In order to establish a unified and effective administration for the Federal capital territory a Task Force was set up to undertake an in-depth study of all the prevailing economic, political and social conditions in the F.C.T. On the 1st of April 1978, this Task Force, on 31st January 1978, commissioned the Department of Research and Consulting, Institute of Administration, Ahmadu Bello University, Zaria, to assist in carrying out some research to enable the Task Force achieve the following objectives as stated in its terms of reference:

- I. (i) Undertake a detailed study of all the laws, regulations and orders not being enforced by the authorities;
- (ii) Evaluate and assess the current level of delivery of social services in the territory;
- (iii) Assess the social and political implications of planning the whole communities and settlements in the F.C.T. under one government and
- (iv) Carry out any studies that are essentially necessary in designing a local administrative system that will be capable of:
 - (a) Playing a positive role in identifying the needs of the people living in the territory and meeting those needs on continuing basis;
 - (b) Providing effective control of any physical development throughout the territory;
 - (c) Promoting economic and social development of the area with the economic and social constraints and consistent with the programmes of the Federal Capital Development Authority;

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- A. (i) Undertake a detailed study of all the laws, regulations and orders now being enforced by the authorities;
- (ii) Evaluate and assess the current level of delivery of social services in the territory;
- (iii) Assess the social and political implications of bringing the whole communities and settlements in the F.C.T. under one government and
- (iv) carry out any studies that are essentially necessary in designing a local administrative system that will be capable of:
- (a) Playing a positive role in identifying the needs of the people living in the territory and meeting those needs on continuing basis
 - (b) Providing effective control of any physical development throughout the territory;
 - (c) Promoting economic and social development of the area with the economic and social constraints and consistent with the programmes of the Federal Capital Development Authority;

(d) responding to economic and social changes that are to take place in the Federal capital territory in the process of building the new city over the construction period.

B Make recommendations on the implementation programmes for installing the newly designed administrative system.

C Make any other recommendations the Task Force considers necessary.⁴³

Although it is not possible to reproduce the detailed findings and recommendations of this Task Force, suffice it to say that it did recommend the establishment of some administrative units within the F.C.T.⁴⁴ In accordance with this recommendation, Seven 'Development Areas' were created within the F.C.T. These Development Areas are, in so many ways, similar to the local government councils or local government administrative areas in various states of Nigeria. They were meant to serve as the second tier of government within the F.C.T. and to operate at the grass root level. All in all seven development areas were created and an administrative officer posted to each development area as secretary and sole administrator of the area. He is the official representative of the Minister for Federal Capital Territory in the area and he presides over all development activities within that development area. These development areas are:

1. Abaji Development Area
2. Bwari Development Area

3. Karshi Development Area
4. Kuje Development Area
5. Kwali Development Area
6. Rubochi Development Area
7. Yaba Development Area

This pattern of Development Administration apart from coordinating the various settlements and smaller local units may, if properly organised, allay the fears of some of the inhabitants of the territory for losing their cultural and social identities. A census conducted in the area showed that the area is inhabited by well over 125,000 people.⁴⁵ The main idea behind evolving this Federal capital territory administration is that, while the F.C.D.A. takes the major responsibility of planning and development within the territory the new Federal capital territory administration will be concerned with the provision of essential services to the current residents of the territory. Since their inception the various development area administrative units have achieved a lot in the area of physical development and provision of essential services within the F.C.T. The only question which remains unclear is the nature of the laws that are being enforced to regulate the activities of these constituted authorities and govern the lives and properties of the inhabitants of this area - The F.C.T.

APPLICABLE LAWS

Laws and regulations now operating within the F.C.T. may be discussed with particular reference to basic issues governing the lives and properties of the inhabitants of the territory. By virtue

of S.13 of the F.C.T. Decree already cited, the laws and regulations that are currently enforced within these development areas are the laws and regulation of Niger, Plateau and Kwara States. This has become the only alternative because though the F.C.D.A. has been charged with the responsibility for the physical development of the territory, it was not given any judicial or legal functions. Similarly, despite the fact that this authority (F.C.D.A.) was conferred with many powers to enable it carry out its functions properly and on schedule it was not conferred with any statutory power dealing with important issues like local revenue collection or ways and manners of generating funds internally for the performance of its functions. The inability on the part of the F.C.D.A. to perform judicial or legal functions necessarily means that it cannot enact rules regulations or by laws to be applied within these new development areas. So, what we have now is the laws of Niger State being enforced in Bwari, Kuje, Kwali and Yaba Development Areas; laws of Plateau State being enforced in Karshi and Rubochi Development Areas and laws of Kwara State applicable to Abaji Development Area. There is no doubt that such an arrangement poses many problems. Let us take, for instance, the issue of appointment and discipline of a District Head or a village Head. Prior to the advent of the Decree, all District and Village Heads in Karshi were appointed and turbanned by the Emir of Keffi. Also all major disciplinary measures against such village and District Heads were initiated by the Emir as the Chairman of the Emirate Traditional Council and submitted to the Plateau State Government together with the resolution of the local Government. If such rules and procedure were to be applied now in Karshi Development Area (by virtue of S.13 of F.C.T. Decree) would the

Emir of Keffi still send his recommendations to the Government of Plateau State (which contradicts S.1(3) of the F.C.T. Decree) or the F.C.D.A. (which is a body that cannot perform judicial or legal functions) or to the Federal Government?

There are also other by laws which are peculiar to each state. How, for example, can the men and officers in Kuje or Yaba Development area enforce the Niger State bylaws relating to bicycle licence, dog licence, hunting permit, slaughter fee and gun licence in these new administrative units that are no longer part of Niger State. Also in other cases of revenue collection, one finds many areas of variation in existing local Government rates among these three states. What the F.C.T. requires therefore, is not only a unified system of administration but also a unified legal system. Clearly defined rules and regulations to be applied everywhere within the F.C.T. There is also the need for F.C.T. courts and judges with well defined area of jurisdiction.

We now may proceed to examine how the agency responsible for the planning and development of the new capital city was created, what powers it possesses, how it has been functioning in the light of the available legal framework. The next section provides us with all these information.

SECTION C

THE F.C.D.A. - ITS POWERS, FUNCTIONS AND LIMITATIONS

In reviewing the structure, functions, powers and limitations of

the Federal Capital Development Authority we are, in essence, answering or attempting to answer a question often asked by planners, lawyers, academics and the public at large: What is the F.C.D.A.? In other words, is it a local Government Authority, or a Property Development Authority, or a Town and Country Planning Board or indeed a purely Commercial Enterprise? The most appropriate method of getting to know exactly the nature and scope of this body - FCDA - is, to our mind, by examining it in the light of the statute establishing it. Also its achievements and limitations would be better assessed in the light of the same statute.

The Federal Capital Development Authority is a special urban development corporation established by the Federal Government of Nigeria under Decree No. 6 of 1976. It was established as "a body corporate with perpetual succession and a common seal".⁴⁶ In Section 4, subsection 2, paragraphs (a) to (b) the authority as a legal entity is given power to sue and be sued, to hold and manage movable and immovable property. Also under the Decree, the F.C.D.A. has an Executive Secretary, who is the Chief Executive of the Authority. The chief executive is appointed by the supreme military council.⁴⁷ By virtue of his position he is the secretary of the F.C.D.A. Board. Apart from the chairman, there are eight other members comprising the Board.

There are no provisions in the Decree for meetings of the FCDA Board, who and when to convene meetings, how many members should form a quorum in board meetings. The length of period for which the chairman and members of the board may stay in office is also not provided for. The Decree is also silent on whether the appointment of

the chairman and his members should be on full-time or part-time basis. Nor is there any reference made in the Decree in respect of remuneration and allowances payable to the chairman, members and the executive secretary. This, in our opinion, constitutes a serious omission on the part of the Decree. For the chief executive of the board, the Decree should have provided in very clear terms some of the necessary qualifications and experiences required from any one aspiring to that office. We also consider that issues like when and who is to convene board meetings and the exact number of people needed to form a quorum are very important and they ought to have been taken into consideration. Equally important is the need to specify in the Decree the exact number of years the chairman and members are to stay in office and whether or not they are eligible for re-appointment after their first term in office. In order to appreciate the need for all these provisions we may briefly examine some of the laws establishing urban planning and development boards in some States of Nigeria and compare them with the provisions of the F.C.D.A. Decree

In the Schedule to Edict No. 5 of 1974 - the law establishing the Jos Metropolitan Development Board - there are provisions relating to the tenure of office of the chairman and members in the following form:

1. (1) The chairman shall hold office, subject to the provisions of this Schedule, for three years from the date of his appointment, but shall be eligible for re-appointment.
- (2) Every member, other than the chairman, shall hold office subject to the provision of this Schedule, for three years from the date of his appointment, but shall be eligible for reappointment.⁴⁸

Also the Fourth Schedule to The Kaduna Capital Development Board Edict No. 8 of 1971 has the following provisions in respect of when and who can call a meeting to form a quorum:

Section 5(4) Any six members of the Board may by notice in writing signed by them request the Chairman to call a special meeting of the Board for the purposes set out in such notice and the Chairman shall thereupon call a special meeting.⁴⁹

In terms of forming a quorum S.6 further provides that:

6. Eight members (including the Chairman or other member presiding) shall form a quorum at any meeting of the Board.⁵⁰

There is no doubt that the examples cited above contrast sharply with the position of the F.C.D.A. Making clear and specific provision concerning the number of years the Chairman and Board members have to stay in office, as in the case of The Jos Metropolitan Development Board, will remind the members that they are not there for ever and that they have to work hard and make some impact within the period given to them to serve. The provision that allows for reappointment will equally serve as an encouragement to all Board members to work efficiently and honestly so as to be eligible for reappointment. This makes it possible for the government to assess the performance of the Board over a period of time and to get rid of the inefficient members. Failure to make such provision will only create a situation where by

Board members continue to serve for many years without being assessed. Also the provision stating clearly when and who can initiate a move to call for a meeting of the Board is very important. In the first place, it does not allow a situation where only the Chairman or the Secretary holds the power to call for a meeting. It is possible for a Chairman or Secretary to deliberately refuse to call for a meeting even when there is the need for one. This can happen in cases where the law concerning who and when meetings can be called is either unclear or where the law provides that only the Chairman or the Chairman and the Secretary have powers to call for a meeting. Such provisions are undemocratic and encourage some members to be too powerful and as such controlling and deciding the trend of events. The Kaduna Capital Development Board Law cited above therefore provides us with an example of what ought to be the appropriate position in issues relating to Board meetings. This particular provision shows that for a quorum to be formed the Board only requires eight members (out of the maximum fifteen members allowed by S.4(1) of the Edict) to be present. The significance of this provision lies in the fact that it goes to show that no individual member is indispensable in the affairs of the Board. In view of the importance of such provisions, we find the F.C.D.A. Decree inadequate in this direction.

The inadequacy of the F.C.D.A. Decree becomes more glaring when compared with the provisions of Laws of Malawi, Cap. 39:02 (An act to provide for the establishment of a capital city at Lilongwe and for the establishment of a Capital City Development Corporation). Unlike the F.C.D.A. Decree, the Malawi Act has made appropriate provisions as regards the membership of the corporation, their tenure of office,

when to call for board meetings, who can call for the meetings as well as what number of members constitute a quorum. Some of the relevant provisions here are:

Section 4(1) The Corporation shall consist of not less than six and not more than ten members, none of whom shall be a Minister or a member of the Parliament of Malawi.

According to subsection (2) of the above section, all members are appointed by the Minister and it is the Minister who shall designate one member to be the Chairman and another member to be the Deputy Chairman. This contrasts with the position in Nigeria where the Chairman and all Board members are appointed by the Supreme Military council (S.3(1) F.C.D.A. Decree) Further more, subsection (4) to the section quoted above, provides two years as the period for which a member may hold office at the first instance, and three years as the period for which the Chairman shall stay in office for the first instance. Section 4 subsection (5) goes to provide that the Chairman, Deputy Chairman and all other members shall be eligible for reappointment at the conclusion of their respective terms of office:

As far as the issues relating to the Board meetings are concerned, the Malawian legislation has made the following clear provisions.

Section 7 (5)

"Unless otherwise provided in standing orders made under section 8, a quorum at a meeting of the Corporation shall be the Chairman and three members."

S.7 (6) goes thus,

"The Corporation shall meet at least quarterly and at such other times as may be required by standing orders made under section 8"

S.7 (7) "Any four members may by notice in writing signed by them request the Chairman to call a special meeting of the Corporation for the purpose set out in such notice. On receipt of any such notice the Chairman shall call a special meeting. Such special meeting shall be called for a day that is not less than seven nor more than thirty days from the date on which the notice was received".

Functions and Powers of the FCDA

The functions and powers of the F.C.D.A. are many and interwoven. The F.C.T. Decree does not provide any clear-cut distinction between the powers and functions of the F.C.D.A. Under S.4(1) (a) and (b) the F.C.D.A. is charged with the responsibility of choosing the site for the location of the capital city within the F.C.T. and preparing a Master Plan for the new capital city and of land use with respect to town and country planning within the F.C.T. As earlier stated, the F.C.D.A. commissioned the IPA to produce the Master Plan and sought the services of other international consultants in completing the site development and lay out plan. All these functions were performed by virtue of the power conferred on the F.C.D.A. by Section 4(2) (a) of the Decree which provides that the Authority shall have power to do

anything which in its opinion is calculated to facilitate the carrying on of its activities including power to enter into contracts or partnerships with any person or body to facilitate the discharge of its functions. Similarly, the Authority can enter into contracts or partnerships to provide municipal services, establish infrastructural services, construct and maintain roads, bridges, buildings and such other works as may be necessary for, or conducive to the discharge of its functions under the Decree. Furthermore, the Authority can exercise such other powers⁵⁷ as are necessary or expedient for giving full effects to the provisions of the Decree. In fact, under the housing programme of the Federal capital, contracts have been awarded by the Authority for the construction of 5,443 housing units. Out of these 2,243 were constructed by small scale indigenous contractors while the remaining 3,200 were constructed by big construction firms.⁵²

Under Section 4(1), (c), the F.C.D.A. can provide municipal services and run and manage them; it can also contract them to another person or body to provide and manage them, as provided under S.4(2) (e). Also, all infrastructural services can either be provided and managed by the F.C.D.A. or can be contracted to another person or body to establish them and also manage them by virtue of S.4(1) (d).

Section 4(2) (f) provides for the training of managerial and technical staff for the purposes of discharging the functions of the F.C.D.A. According to this section, the authority can embark on any training programme for the purposes of developing its managerial or technical manpower or can alternatively sponsor any of its staff to acquire such skill and knowledge that are necessary to the discharge of its functions.

A careful review of these powers and functions raises a number of legal issues. First of all, does the F.C.D.A. have a legal Department? If it does what is the role of the legal advisor in the affairs of the Board and what exactly does his department do to ensure that all legal requirements are met in awarding contracts and indeed what particular type of contract format does the F.C.D.A. use? Does it conform with the requirement of the F.C.D.A. and their local realities or is it based on a foreign format which has no bearing on the functions of the F.C.D.A. and its ultimate goal? Also, we need to know the manpower strength of the legal Department in relation to the amount of legal work available. All these and other issues were raised and answered in an interview between the author and Mr. Labaran M. Jema'a the legal adviser to the F.C.D.A. held on 5th April, 1983 at the new Federal capital Abuja. This interview covered a number of issues on both administrative and legal aspects of the F.C.D.A. We shall present however only some relevant excerpts of the interview relating to some of the powers and functions of the Board discussed above. We shall also reproduce those excerpts that show the position of the legal Department in the day to day affairs of the Federal capital Development Board.

THE INTERVIEW

Author: As the Legal Adviser to F.C.D.A. do you sit at
Board meetings?

Legal Adviser: I am supposed to sit on the Board meetings but I do not. I have drawn the attention of the Board on the need to have a lawyer on the Board but nothing has been done up till now. However I do attend meetings of the Executive Management Committee.

Author: What do you think is responsible for the failure on the authorities to respond to your representation on the need to have a lawyer on the Board?

Legal Adviser: It may simply be because the people at the top do not seem to appreciate the role of a lawyer at the highest level of decision making or the functions of the legal department in the entire process of planning and developing the capital city. For one reason, the F.C.D.A. started without a legal Department and for another in most developing nations the role of lawyers is only restricted to the court room.

Author: With this arrangement how do you think the legal department can contribute effectively in the planning and development of the Federal capital.

Legal Adviser: All Board decisions and deliberations as contained in the minutes are sent to this department and we advise when certain decisions are ultra vires or illegal.

Author: So many contracts are being awarded by the F.C.D.A. what role does the legal department play in the award of these contract, and what form of contract does the F.C.D.A use.

Legal Adviser: We are represented at the Executive Management Tender's Committee. Our representative is to ensure that all contracts are awarded in accordance with the legally laid down procedures. As for the format, when the F.C.D.A. came into existence it was using the Federal Ministry of works forms of contracts but we later thought it wise to design our own form of contract format based on our own requirement and the local realities (See Appendix B).

There is no doubt that the above excerpts are very revealing. First of all, despite all the wide powers conferred on the F.C.D.A. by the Decree establishing it and despite the numerous functions it has to perform, no provision was made to ensure that a lawyer sits on the Board. The fact that Minutes of all Board Meetings are sent to the legal advisor for his comments and legal opinion is not enough. It would have been better to involve the lawyer in the process of decision making. This will help to clear all doubts as regards the legality or otherwise of actions to be taken by the Board or its component departments. Furthermore, the fact that the F.C.D.A. started operating without a legal department goes to show how the authorities in the Third World underrate the role of law and lawyers in development. It is quite inconceivable to imagine that a project as big as Abuja can start without a single lawyer to advise the

professional engineers, planners, architects and quantity surveyors. The legal department in this organization is extremely vital. It is this department that guides all other departments on current laws or rules and regulations that affect them. Most professionals are ignorant of the laws that guide and govern the conduct of their professions. An Engineer requires the knowledge and skill of the lawyer to acquaint him with the existing rules and current changes in building regulations. Similarly the Accountant or Finance Officer may not be fully conversant with the technical aspects of law of Taxation.

The failure on the part of the authorities in Abuja to ensure that a fully equipped legal department was established at the onset of the project has led to many teething problems. By the time the legal department was established its manpower strength was not proportionate to the amount of legal work available. Most of the legal officers currently serving in the department are not very experienced. This situation, according to the legal adviser, has made it necessary for the F.C.D.A. to employ the services of private legal practitioners on retainers.⁵³ The role of experienced private legal practitioners in the work of the legal department has a number of advantages. We believe that, apart from supplementing the efforts of other legal officers in the department in terms of finding solution to various complex legal issues, the private legal practitioners will provide a training ground for the relatively young and inexperienced lawyers who need to familiarise themselves with the practical and more complicated aspect of their profession.

Sources of Finance

There is no doubt that the ability of any organization to function

effectively depends largely on its sources of money. The Decree establishing the F.C.D.A. has not made any clear and categorical provisions relating to its financial resources and expenditure. Considering its wide powers and numerous functions, the F.C.D.A. needs to be given some powers to generate funds in a specified manner so as to pay for its services and projects. Ever since its inception, the F.C.D.A. has relied solely on the Federal Government as its only source of funds. The former Minister for the F.C.T., Alhaji Iro Danmusa had this to say in a press briefing in Abuja on 20th July, 1982:

"It is the policy of this administration that this will be maintained until the completion of the priority projects that are very crucial to the phased movement of the seat of the Federal Government to the new city. The total amount of money spent on Abuja since its inception up to and including 31st May 1982, is seven hundred and twenty-two million, five hundred and twenty seven thousand, nine hundred and sixteen naira only. N (722,527,916.00)"⁵⁴

By December, 1982, the sum of N870 million had been spent apart from the sum of about N23 million paid to Niger, Plateau and Kwara States as resettlement benefits from October 1977 to January 1983⁵⁵. These figures are staggering. The fact that an expenditure of this size constitutes a burden on the over all national economy of a developing country like Nigeria cannot be over emphasised. Furthermore, this amount of money being spent by the Federal Government goes to show how public corporations generally, and urban development corporations in particular, in the developing nations are dependent on the governments as their main and only sources of finance. Although we acknowledge the fact that a self-supporting agency depends largely on the profits derived from its activities, and although we fully appreciate the fact that urban development corporations are basically service oriented organisations and as such cannot be in the same financial position

as other public corporations that are essentially commercial and profit oriented, one important question probes our minds: why is it that urban development corporations cannot be self-supporting? Or: Does it necessarily follow that for an agency to be self supporting it must be that which is purely commercial or profit oriented? The answer to this question, in our view, is not in the affirmative. We believe strongly that urban development corporations can be self-supporting to a very large extent while at the same time performing their functions as service oriented organisations. The main problem is with the various governments establishing such development corporations. Most of these corporations in the developing countries have restraints on resources - financial and physical - because their development schemes are mainly, if not exclusively, promoted and financed by the central or State governments that establish them.⁵⁶

Taking the F.C.D.A. as an example, we believe that the development of the capital city will, in the long run, not be the monopoly of the Federal Government. Various organisations and individuals will contribute their own quota in the economic and physical development of the new capital. To our mind, this is the more reason why the F.C.D.A. Decree ought to have made some provisions empowering the authority to liaise with other able persons and bodies corporate with the view to enhancing their financial position. Instead of relying entirely on the Federal Government for finance, the authority should have been allowed by the statute establishing it to generate funds internally for meeting some of its obligations or discharging some of its functions under the statute. We may compare this situation with some of the provisions of The Kaduna Capital Development Board Edict No. 8 of 1971 in relation to the power of the

Board to generate funds internally to supply and pay for its services without necessarily over relying on annual grants and special government subventions and loans. Section 14(1) of the Edict provides that:

Subject to the provisions of this section, the Board may, by issuing debentures, stocks or other securities or in any other manner, borrow sums required by it for meeting any of its obligations or discharging any of its functions under this Edict.

Subsection (2) (a) of this same section 14 quoted above goes on to provide that:

The power of the Board to borrow shall be exercisable only with the approval of the Military Governor as to the amount of the loan, the sources of the borrowing and the terms on which the borrowing may be effected, and the approval given for the purposes of this subsection may be either general or limited to a particular borrowing.

Apart from the power given to the Board to borrow money by way of direct loan after getting the necessary approval from the Military Governor, the Board gets yet another mandate to invest money in form of stocks, shares or debentures with the view to generating funds internally. Section 16 of the Edict has the following provision:

The Board may invest money standing to its credit and not for the time being required for the purposes of its functions in stocks, shares, debentures or any other securities whatsoever and the Board may sell, dispose of or otherwise deal with all or any of such securities.⁵⁷

A careful review of all the provisions quoted above clearly shows that quite unlike the F.C.D.A. Decree, the Edict establishing the Kaduna Capital Development Board has taken into consideration the need to allow the Board to explore other sources of raising funds for the

purposes of executing its services. For any legislation to be adequate in this direction, we hold the view that, it must do two things. First of all, it must set out the principal sources of finance of the Board - initial grants and periodical or annual government subventions. Secondly, it must provide for other loans to be negotiated by the Board independently. The first step was taken by the F.C.D.A. Decree but it failed to provide the Board with the necessary power of using their initiative and available resources to further raise their financial strength by exploring other avenues of making money and supplementing the grants they receive from the government. A very good example of the way an urban development corporation can raise funds through the use of its available resources is by leasing out plots of land to commercial organisations and other interested bodies. Although in the case of the F.C.D.A. in Abuja this will require some amendments to the existing Land Use Decree, it remains one of the effective methods of generating surpluses by UDCs. In fact the Malawi Capital City Development Corporation successfully generated funds by leasing and selling freehold to Embassies and commercial organisations.^{57A} It is however important to add that wherever UDCs are given discretionary powers to explore different sources of raising funds such powers should be accompanied by measures aimed at controlling the financial activities of the board.

Talking of control necessarily brings us to another area of importance in our discussion. That is the governmental or executive control of public corporations in general and UDC in particular. We may briefly examine the mechanism of control that are available in the legal framework of F.C.D.A.

Governmental Control

Perhaps the most convenient starting point is the thorough understanding of the concept of controls as they relate to the overall

existence of public corporations and the underlying purposes for which governments exercise control over public corporations. Public corporations, of course, vary in their structure, scope of operation and the purposes for which they are created. The nature and scope of control to be exercised would therefore depend largely on the type of public corporation, its scope of operation and the basic reasons that gave rise to its creation. Broadly speaking however, control can mean, on one hand, the enunciation of general principles of policy and, on the other, supervision of the minutest aspect of the general administration of a public corporation. This includes the setting of targets for the corporation in question and the supervision of the actual operations of the corporation with the view to ensuring that such targets are achieved.⁵⁸ In a narrower sense, there are various forms of control. The control can be, for instance, by way of appointment to the Board or to the Management. When a public corporation is wholly owned by the government, it is traditional for the powers of the appointment to the Board and to the top most management positions to be vested in the government. In the case of the F.C.D.A. both the Chairman and the Board members and the Executive Secretary are appointed by the Supreme Military Council under sections 3(1) and 5(1), respectively, of the F.C.D.A. Decree. It is clear from this provisions, that the mechanism of control in terms of appointment is vested in the government. As regards the position of other senior officers and staff of the authority, it is clear as to who controls and supervises them. By virtue of section 5 sub-section (3) and (4) of the same Decree such officers and staff are appointed and their remuneration and tenure of office determined by the authority after due consultation with the Federal Ministry of Establishment. In

this case, the Executive Secretary, Chairman and Board members of the F.C.D.A. can quite rightly control supervise and discipline all other senior staff and officers of the authority.

Although there are valid arguments for and against the government having the sole power to appoint the Chairman, Board members and the Chief Executive of Public Corporations, we are of the view that, in cases where the government possesses such wide powers, as in the case of F.C.D.A., the result is almost always the appointment of political colleagues and unsuccessful parliamentary candidates of the ruling party.⁵⁹

The most practical and relevant example here was the appointment of Mr. J. J. Kadiya as the first Minister of the Federal capital and Chief Executive of the F.C.D.A. in Nigeria in the year 1979. Before his appointment Mr. Kadiya contested for a senatorial seat on the platform of the ruling party in Plateau State and lost.⁶⁰ Many Nigerians saw this appointment as a matter of party patronage. During his tenure of office, there were many allegations that only members of the N.P.N. ruling party were benefitting from awards of contracts in Abuja.⁶¹ Also many industrious and conscientious members of staff of the F.C.D.A. were reported to have been superseded in promotion by less competent colleagues who happened to be sympathisers of the N.P.N. ruling party in the former civilian regime.

The danger with investing the power for such important and strategic appointments on the government alone is that, it creates a situation where the board members are ill-suited to the vital tasks of policy formulation and management.⁶² Apart from the inability of the board members to cope with major issues that require technical and

professional expertise, there is the very serious risk of portraying the board more as an extension of the government than as an independent body which shields the management from unnecessary pressure from the government.

As far as the appointment of the Chief Executive of a public corporation is concerned, we are of the view that the statute establishing that corporation should clearly spell out all the necessary qualifications and experience required for that office. The board of directors of the corporation should be empowered to interview candidates for that post and recommend to the government the name of one out of the candidates whom, in their opinion, is most suitable for the job. This will ensure peace and understanding between the Chief Executive and the Board. If on the contrary, the Chief Executive was appointed by the Head of the Federal Government directly, there is the tendency that he will not feel that he is answerable to the board. For example, by the nature and manner of his appointment and the tenure of his office under section 5(1) and (2) of the F.C.D.A. Decree, the Executive Secretary cannot be controlled, queried or disciplined in any way by the board. This particular feeling that the board cannot in any way supervise or control him may make him assume that he is above the board and this will certainly not augur well for the good working relationship between the board and the Chief Executive.

Still on the composition of the board of public corporations, there is one feature which remains common in most of the developing countries. That is the fact that, the professionals, e.g. the chief engineers, the chief architects, the chief town planners and even the legal advisors are all separate from the board.⁶³ The day to day affairs of the board are conducted by these professionals while the

board members only meet once in a while. Failure to include some of these professionals on the board of public corporations, particularly those on the urban development corporations is a major defect in the whole process of urban planning and development. The composition of most of the UDCs boards is not capable of stimulating any effective policies. Most of the board members who sit on the board meetings to formulate policies and decide on major issues relating to urban development and planning are laymen who know very little or nothing about the practical or professional aspects of the project their agency is executing. It is very important here that all legislations establishing such UDCs should make provisions for coopting professionals to sit on board meetings as and when the need arises. As for the legal advisor, it is always better to get him involved at the highest level of policy decision making. His presence on the board will help clear many legal issues and direct the board towards a path that is legally safe. This is much better than only involving the legal adviser at a stage when issues are clearly out of hand and when much harm has been done. The law that provides an excellent example of how the Board of an urban development corporation can benefit from the wealth of experience and expertise of its professional staff is the legislation establishing the Malawi Capital City Development Corporation (Laws of Malawi, cap.39:02). Section 7(4) of that particular Act provides that:

Where upon any special occasion the corporation desires to obtain the advice of any person on any particular matter, the corporation may co-opt such a person to be a member of such meetings as may be required and such person while so co-opted shall have all the rights and privileges of a member save that he shall not be entitled to vote on any question.

By virtue of the above provision, it can be seen that the Board can at any time co-opt the chief planning expert, for instance, or the legal adviser as members of the board to participate in deliberations on matters that directly concern their areas of expertise. This is a very encouraging development as far as legislating for urban planning and development is concerned. Instead of relegating the professionals to the background this provision has brought them into the forefront. It also raises the morale of such experts and enables them to offer very carefully considered advice and honest opinion.

Coming back to our main area of discussion in this section - Executive Control - it is important to observe that, of all the control mechanisms available to the government, finance appears to be the most important single means of control of public corporations irrespective of the purposes for which they are created. We may now examine, on the strength of the F.C.D.A. Decree, how the Federal Government intends to use this mechanism of control. From a critical review of the financial provisions of the Decree, one can see that the government has left so many loopholes.

First of all, the provision concerning statement of accounts and audited accounts of the F.C.D.A., was made in section 11 of the Decree. This section requires the F.C.D.A. to keep proper accounts and proper records of audited accounts in each financial year in such form as it may direct. In accordance with that section, the auditors of the accounts, who are to be approved by the Federal Commissioner for finance, are to submit to the authority two reports:

- (a) A general report setting out the observations and recommendations of the auditors on the financial affairs of the authority gene-

rally for that year and on any important matters which the auditors may consider necessary to bring to the notice of the F.C.D.A; and

- (b) A detailed report containing the observations and recommendations of the auditors on all aspects of the operations of the F.C.D.A. for that year.

As far as the annual report of the F.C.D.A. is concerned, section 12 of the Decree provides that the authority shall prepare and submit to the Supreme Military Council (SMC) of the Federal Republic not later than 30th June in each financial year a report on the activities of the F.C.D.A. for that year and of the reports mentioned in section 11(3) of the Decree. This particular provision is, in our view, inadequate. It does not require the F.C.D.A. to prepare and submit estimates of revenue and expenditure in respect of the next financial year. All it does is merely empower the authority to keep proper accounts and proper records of accounts, cause such accounts to be audited and prepare and submit annual reports of the activities of the authority within the past financial year. No mention has been made in the Decree about the revenue which the F.C.D.A. expects in the forthcoming financial year. Nor is there any provision requiring the Board to submit a carefully prepared estimate of its total expenditure for the next financial year. This is a very serious omission on the part of the Decree. This is because, apart from the prepared reports and audited accounts of the Board for the past year, the Supreme Military council necessarily needs to know the exact, or at least, the rough figure in terms of the revenue the Board expects and the expenditure

it estimates to incur in the next financial year. The Federal Government can only be in a position to make adequate financial provision to the authority after comparing its projected revenue with its expected expenses. Failure to make such provisions in the Decree is likely to lead to either under funding the authority or providing it with more funds than it actually requires in a given financial year.

It may be necessary to pause here and examine what happens in practice as far as the financial operation of the F.C.D.A. is concerned.

The author did not get the full cooperation of the accounting staff of the F.C.D.A., during his field work interviews, in trying to discover how in practice the authority generates its funds and meets its annual financial obligation. Similarly, all efforts to get hold of the current annual report and accounts (the current one then was that of 1982/83 financial year) of the authority were unsuccessful. Most of the relevant officers contacted answered in almost the same tune - "The account for the current financial year is at present under external audit and should be ready in a few months time". The latest financial document at our disposal then was the 1978/79 3rd Annual Report and Accounts. The Table below (at p.8 of the Report) shows the financial breakdown of the authority as at 31st March 1979 and also gives an insight to the authority's sources of finance:

TABLE 2

	1976/77 (audited)	1977/78 Cumulative (audited)	1978/79 Cumulative (subject to audit)
1. Subvention from the Fed. Govt.	2,800,000	74,647,000	109,647,000
2. Other Income	-	-	793,127
3. Expenditure	2,800,000	74,647,000 11,626,854	110,440,127 21,655,210
4. Funds	1,493,280	63,020,146	88,784,917

SOURCES: FCDA 3rd Annual Report and Accounts 1978/79 p.8

There is no doubt that the above table is very revealing. First of all, it goes to confirm the point made earlier in this chapter that the authority relies heavily on its annual subvention from the Federal Government as the main, and possibly only, source of funds. It can also be seen from this Table that in both the 1976/77 and 1977/78 financial years not a single Naira was independently generated by the authority (column 2 of the Table). In both financial years the annual expenditure represents exactly the same amount as the subvention the authority received from the Federal Government. This clearly shows that unless and until the F.C.D.A. is allowed to explore other sources of generating funds independently it will always remain at the mercy of the Federal Government and can never be self-supporting.

We have also, in the course of our research, discovered that, neither this particular Annual Report quoted above nor any document we had access to contains a carefully prepared estimate of the

authority's projected revenue and its expected expenses for a particular financial year. All that happens in practice is for the authority to rely on the annual budgetary allocation made to the F.C.D.A. by the Federal Government, execute its activities based on the funds available to it from this allocation and prepares annual report and accounts (like the one quoted above) which will then be submitted to the Supreme Military Council in accordance with Section 12 of the F.C.T. Decree.

As a result of this inadequate arrangement the authority appeared to be receiving more money than it actually required each financial year. The inevitable result of this were, execution of unnecessary projects, fraud and a large scale corruption by the officials of the authority. In January 1983, the former Administrator of the F.C.T., Alhaji Ibrahim Majidadi and four other senior members of staff of the F.C.D.A. were arrested in connection with an alleged fraud involving the sum of N14 Million.⁶⁵ The Assistant Inspector-General of Police in charge Force Criminal Investigation Department (C.I.D.) Alhaji Muhammadu Gambo Jimeta (now the Deputy Inspector-General of Police, Nigeria) was the officer who led the investigating team into the activities of the F.C.D.A. officials. He revealed that the bank accounts of twelve officials of the authority were frozen and that his investigating team had discovered the sum of N2 million in one of the frozen accounts.⁶⁶ Also in the course of their investigation the police seized 30 houses belonging to those suspected to be involved in the Abuja fraud. A number of vehicles belonging to these suspects were also impounded by the police in various parts of Nigeria.⁶⁷

This unfortunate situation within the F.C.D.A. is created by lack of adequate legal provision regarding the financial operation of the authority. We may compare this situation with section 18 (5) of Law

No. 19 of 1982. Plateau State of Nigeria [a Law to make provision for the establishment of Plateau Urban Development Board]. This particular section provides that:

Before the commencement of each financial year the Board shall prepare an estimate of its revenue and expenditure for that financial year and submit the same to the Governor for his approval, and he shall have power to disallow or reduce the provisions under any item in the estimate as he may consider necessary.⁶⁸

From the above provision, it can be seen that the Governor, as the Chief Executive of the State, will, before the commencement of each financial year, have a thorough knowledge of what amount of revenue accrues to the Board in the coming year as well as the estimated amount of expenditure to be incurred by the Board. He can also, by virtue of this provision, query or disallow any unnecessary expenditure. Thus the Governor can use this power to control any financial excesses by the Board. The Board cannot expect to get more funds than it requires. This will also check against unnecessary projects by the Board. We think this same provision ought to have been made in respect of the F.C.D.A. Although the provisions of Sections 11 and 14 of the F.C.T. Decree are meant to serve as a means of governmental or executive control, they tend to create some loopholes which the authority does capitalize upon. A clear example of this loophole is the failure on the part of the Decree to provide for the preparation at the beginning of each financial year by the authority of its estimated revenue and projected expenditure and for such prepared estimate to be duly submitted to the Supreme Military Council for approval. In the absence of such provision nothing stops the authority from getting too much fund, incurring unnecessary

expenses and embarking on projects that are not relevant to the attainment of its social and economic goals. Furthermore, failure to make specific provisions concerning the annual estimate of the F.C.D.A. amounts to underrating the importance of accountability and information flows. In our view, the nature and scope of financial accounts to be provided by an urban development corporation constitute the single most important source of information for the government. Even though there may be other sources of information flow open to the government, the extent of information it receives relating to the financial activities of any public corporation will determine its ability to exercise effective control over the corporation. This is why we think it is very important for the particular piece of legislation providing for information flows regarding financial matters to state clearly the exact nature of the information that has to be disclosed to the government, the degree of its accuracy and the frequency and regularity of its transmission.

Though the F.C.D.A. Decree has made some provisions for independent audit reports, we find such provisions to be too general. Section 11 does not deal with questions of efficiency. In most cases audit reports do not examine how far the development corporation under scrutiny has attained its economic and social goals and at what cost. It is our considered opinion here that since the main target of urban development corporations is not the maximisation of profits, a straightforward traditional form of auditing, as in the case of purely commercial enterprises, should not be applicable in assessing the accuracy or auditing the annual accounts of urban development corporations. Instead of relying on the reports of professional auditors who are mostly only concerned with balance sheets concerning

profits and loss, the legislation should empower the auditors to assess, based on the funds available to the UDC in question in the previous financial year, how far it has gone in achieving some of the social and economic goals for which it was created.

In order to stress our point here, it may be relevant to present the Auditors' Report in respect of the F.C.D.A. for the year ended March 31st 1979 and the Balance Sheet for the same year (jointly referred to here as Figure 5). A careful review of this report will reveal the fact that like most of the reports prepared by professional auditors, this one is too technical and not particularly informative as far as the aims and objectives of the F.C.D.A. is concerned. Such reports hardly ever include future plans and the targets of the UDC for the following year. Since UDCs have broad and varying social and economic functions, any reports on their activities over a period of time should, in our view, necessarily reflect this broad mandate. Failure to do that will only enhance the possibility of allowing waste, inefficiency and corruption to go unchecked.

Before we end our discussion on executive or governmental control we must observe some of the negative aspects of these mechanisms of control particularly as they relate to UDCs.

The first danger inherent in control mechanisms is that in the pursuance of control, the government may arrogate for itself certain functions that belong elsewhere. In other words, in exercising executive control, the government must make sure that it does not usurp some of the powers and functions of the UDC. This happens mostly in situations where the rights and duties of both the UDC and the government are not clearly defined in the legislation establishing the UDC. What happens in such a case is that control is often

FIGURE 5: F.C.D.A. Balance Sheet & Auditors' Report 1978/79

ARTHUR YOUNG, OSINDERO & COMPANY
CHARTERED ACCOUNTANTS

F. A. OSINDERO M. A. ADIRIVIS A. O. MOJOLA
C. W. MACRAE K. M. FROHLICH K. OSUN-BENJAMIN
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TELEX : 21112

The Members of the Board
Federal Capital Development Authority
Saleja

We have examined the annexed balance sheet of Federal Capital Development Authority as at March 31, 1979 and the annexed income and expenditure account for the year ended March 31, 1979. We have obtained all the information and explanations which we considered necessary. Proper books have been kept and the accounts are in agreement therewith.

To the best of our knowledge and belief, the Authority complied with the 1978/79 guidelines of the Productivity, Prices and Incomes Board during the year ended March 31, 1979.

In our opinion, the balance sheet and income and expenditure account give respectively a true and fair view of the state of the Authority's affairs as at March 31, 1979 and of the total income and expenditure for the period ended on that date.

March 13, 1980

FIGURE 5 - CONTINUED

FEDERAL CAPITAL DEVELOPMENT AUTHORITY

BALANCE SHEET

March 31, 1979

	Sch. No.	1979		1978	
		N	N	N	N
Employment of funds:					
Property, plant and equip- ment (Note 2a)			8,093,121		1,593,557
Less depreciation			<u>1,441,783</u>		<u>408,546</u>
			6,651,408		1,185,011
Intangible assets:					
Development cost (Note 2b)		3,203,101			
Less depreciation		<u>320,308</u>	2,882,793		
Current assets:					
Accounts receivable	1	2,439,002		90,427	
Deposit for aircraft and motor car		6,947		406,947	
Prepaid expenses	2	84,565		122,320	
Bank balance		13,999,775		61,270,362	
Fixed deposits		60,000,000			
Investment:					
Benue Cement Company - 6% cumulative preference shares		<u>5,000,000</u>			
Total current assets		81,529,289		61,890,056	
Deduct current liabilities:					
Accounts payable and accrued liabilities	3	<u>210,414</u>	81,318,875	<u>54,921</u>	61,835,135
			N 90,853,076		N 63,020,146
			=====		=====
Funds employed:					
Subvention from the Federal Military Government			109,647,000		74,647,000
Deduct excess of expenditure over income			<u>18,793,924</u>		<u>11,626,854</u>
			N 90,853,076		N 63,020,146
			=====		=====

Directors

See accompanying notes.

SOURCES: 3rd Annual Report & Accounts 1978/79
F.C.D.A. Abuja, Nigeria

confused with management. The law here must ensure that the separation of management from control is clearly provided for. Unless there is a clear line of distinction between control and management the UDC will lose its main feature of autonomy. This applies to all public corporations no matter their aims and objectives. In all cases and at all times the law must ensure that the government is not frequently interfering with the day to day operations of a public corporation or decisions as to the implementation by the corporation of its general mandate. Except in cases where the statute has given the government specific responsibility, it is always better to adhere rigidly to this distinction. Since one of the basic ideas behind having a public corporation is to have a body corporate distinct from the government departments which are notorious for their inefficiency and redtape, such public corporations will operate best if they are left with a real autonomy and with minimal outside interference. Also when such a line of distinction is maintained, it becomes easier to ascribe liability for shortcomings in policy or operation.

All said and done, notwithstanding some of the major shortcomings of the F.C.T. Decree analysed in this chapter, the Decree has a number of merits. First of all, it has provided the F.C.D.A. with the much needed basic legal framework in the planning and implementation of any programme of urban development. Total absence of an administrative and legal framework in the past had affected the progress of urban development corporations and frustrated the genuine efforts of many governments. It is not unusual to find some governments overlooking the need to work out a scheme for reconciling possible conflicts of jurisdiction between a newly established UDC and agencies which had been in existence in the same area before the creation of the new UDC.⁶⁹ Even in a situation where there is not a single development

agency or any type of constituted authority in existence at the time of establishing a new UDC, we are of the opinion that, it is much safer to spell out clearly the territorial jurisdiction of the new UDC as well as its relationship with any other agency or body that may emerge in the near or distant future.

The most striking feature of the F.C.T. Decree in this direction is the provision in the Schedule to the Decree which defines in clear terms the exact geographical position and territorial jurisdiction of the F.C.D.A.⁷⁰ Furthermore, the Federal Government of Nigeria did not stop at stating the guidelines, powers and functions of the F.C.D.A. in a government white paper. The government thought, rightly, it was necessary to legislate upon it - hence the F.C.T. Decree No. 6 of 1976. This foresight on the part of the government has helped greatly in avoiding minor jurisdictional problems, power struggle and overlapping of functions between the F.C.D.A. and all the neighbouring Local Governments and other bodies corporate that operate in and around the new capital territory.⁷¹ Yet another merit of this particular legal provision relating to the exact length and width of the area of land constituting the F.C.T. is the fact that it provides a very large portion of land as opposed to a very small piece of land. This provides a model for other countries who may embark on programmes of urban planning and development. In an interview with Mr. Justice T. A. Aguda, the Chairman of the panel on the removal of Federal capital, he gave the reasons that made it necessary for the committee to recommend such a large portion of land as the F.C.T. He goes thus:

"Though we visited many countries, there are just two cities that provide the model for Abuja, namely Brasilia and

Canberra. At the time we visited Australia, by sheer coincidence the government in that country had just set up a committee to look into the possibility of increasing their F.C.T. which was too small. So, from that experience, we recommended a large portion of land for the Nigerian F.C.T."

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We can see, from the above, that in demarcating a small area of land as the F.C.T. the government runs the risk of encountering many planning and expansion problems in the long run. In other words, the above goes to show that, the size of a capital city and indeed of any urban settlement should not be measured by the present need for land and infrastructures but instead it should be based on projected future urban needs.

Another provision of the F.C.D.A. Decree which has the potential for achieving excellent end result is section 4(2)(f). That section provides that the authority has the power to train managerial and technical staff for the purpose of the discharge of all those functions conferred on it by or in pursuance of the Decree establishing it. This legislation will facilitate human resource development by the F.C.D.A. We believe that all government policies, especially urban policy, should emphasize the need for developing human resources. This is because, there cannot be a better yard stick for measuring the overall development of a nation than the extent to which its human resources are harnessed and developed. Not only in the developing nations but even in the advanced countries, the major urban centres are more likely to have a greater concentration of future human resources. By allowing the F.C.D.A. to initiate necessary training programmes or sponsor the training of its managerial or technical staff elsewhere, the law enhances the development of intellectual skills and creativity.⁷³ In contrast to

natural resources that can easily be depleted through constant and rigorous use, the intellect of an individual can only be fully developed through constant use. Hence knowledge is generally developed through use and exposure to other people's thinking, ways of life and experiences. This is why we believe that the F.C.D.A. can, by virtue of S.4(2) (f), apart from organising and sponsoring formal managerial or technical training, exchange staff with other corporations or send their own staff to work in a particular firm for a specified period with the view to gaining from the rich experience of other organisations. This will afford the authority the opportunity for acquiring modern skills and technology at very little or no cost at all.

Having made the above observation we wish to advance the view that all laws establishing UDCs must reflect the development of human resources as an essential component of all policies on urban planning and development.

We may now go to the next chapter where attention will be paid to some of the prominent urban legal problems that face the F.C.D.A. in the actual planning development and management of the new Federal capital for Nigeria. We shall examine, in the light of the present administrative set up of the F.C.T. the available legal framework and the powers and functions of the F.C.D.A. that have been highlighted in this chapter, some of the practical legal and administrative problems in the implementation of the project and the prospects for solutions.

CHAPTER FOUR

NOTES AND REFERENCES

1. See Nnamdi Azikiwe, Dialogue on a new Capital for Nigeria, Zaria, Ahmadu Bello University Press, 1974, p.1.
2. Ibid. p.2.
3. Nigerian Chronicle, 13th February, 1914 p.5 cited in Bayo Ademilehin, "Should Lagos Remain Federal Capital? The Debate in 1914", Sunday Times, 20th June 1971, p.8.
4. Nnamdi Azikiwe, op.cit. p.2.
5. See Report of Conference on the Nigerian Constitution, London, July and August 1953, Annex V P.20-1. Cmd 8934 H.M.S.O. 1953.
6. See Margaret Peil, Cities and Suburbs: Urban life in West Africa, London, New York, Africana Publishing Company, 1981, p.26.
7. See Decree No. 14 of 1967. This Decree came into force on the 27th May, 1967, and from that date Lagos became a dual capital.
8. See Nnamdi Azikiwe op.cit. p.4.
9. See M.A. Makele, "Why Lagos Must Remain Federal Capital", Sunday Times, 13th June 1971, p.8. See also Ramond Ayanwale, "Let Federal Government Take Over Lagos Island", Sunday Times, 20th June, 1971, p.9.

10. See Kolawale Shomade, "The case against the Removal of Federal Capital", Daily Express, 23rd July, 1971, p.4.
11. See W.G. Lawal, "For Security Reasons Let's Move Federal Capital Up-Country" Sunday Times, 3rd May, 1970, p.7.
12. C.O. Duroke, "Case of New Capital", Daily Express, 13th July, 1971, p.4.
See also Olukayode Olunduro, "Lokoja is the Ideal Site", Sunday Times, 20th June, 1970, p.8.
13. See T.O. Akpan, "Referrendum on Capital?" West Africa, 10th September, 1971, p.1051.
14. Sunday Observer, 4th July, 1971, p.10. See also New Nigerian, 5th July 1971, p.1.
15. Dr. J.S. Tarka was speaking during a Radio-Television programme in Kaduna on 13th April, 1973, quoted in Nnamdi Azikiwe op.cit. p.8.
16. See Y. Gowon, Vital Role for Universities - a collection of significant addresses by the former Head of State of Nigeria, Associated Press Ltd Lagos, 1973, p.7.
See also Nnamdi Azikiwe op.cit. p.1.

17. Nigeria has three major tribes i.e. Hausa in the North; Ibo in the East and Yoruba in the West. In addition, it has several other minority tribal groupings in both the Northern and Southern part of the country. For more details on the ethnic structure of Nigeria see the following texts:

Jasper, H. Africa, London, Oxford University Press, 1966, p.44; Gavin Williams (ed) Nigeria - Economy and Society, London, Rex Collings, 1976, p.76; See also Guy Arnold, Modern Nigeria, London, Longman Group Limited, 1977, p.vii of the Introduction to the book.

18. See "A Time of Action" - A booklet of collected speeches of Late General Murtala Muhammed, Printed by Federal Ministry of Information, Lagos, Nigeria, p.10.

19. See "Federal Government Notice", published on August 9th 1975.

20. The full composition of the committee was as follows:-

1. Justice (Dr) T.A. Aguda - Chairman
2. Dr. Tai Solarin - Member
3. Col. M. P. Martins - Member
4. Alhaji Muhammed Musa Isma - Member
5. Chief Owen Fiebai - Member
6. Dr. Ajato Gandonu - Member
7. Professor O. K. Ogan - Member

21 Report of the findings and recommendations of "COMMITTEE ON THE LOCATION OF THE FEDERAL CAPITAL" dated 10th December, 1975, p.iii Paragraph 1.1.

22. See ibid. Particularly P.48. Some of the main findings of the Committee include:

- (i) Inability of Lagos to play dual role of Federal and State capital
- (ii) Inadequacy of land space
- (iii) Inadequacy of physical resources base
- (iv) Insecurity
- (v) Inadequacy of infrastructure.

Finally, the main recommendation was that both the seat of Federal and that of Lagos State Government should be moved out of Lagos. Island.

23. Ibid. p.55 paragraph 8.11.

24. See Federal Government views on the Report of the Committee on the location of Federal Capital (Federal Government White Paper) Lagos, 1976, p.7.

25. Report of the Committee, op. cit. p56, Paragraph 8.18.

26. See Federal Republic of Nigeria, Government views on the Report of the Committee, op. cit. p.7, Paragraph 14, see footnote 12 above.

27. See Federal Capital Territory Decree No. 6 of 4th February 1976.

28. Ibid. section 3(2).

29. Ibid. section 4(1).

30. See Part II to the First Schedule of the 1979 Nigerian Constitution titled "Definition of Federal Capital Territory". Part of this Constitution has now been suspended by the new Military regime in Nigeria. For more details on the suspended sections of the 1979 Constitution, see Decree No. 1 of 13th February 1984, Lagos Nigeria - Constitution (Suspension and Modification) Decree 1984. We are however writing on this Constitution as if it were still intact and still operating.
31. Real example of such villages are: Gwagwalada, Abaji and Karu. The author discovered during the field work that most of the scattered settlements and smaller villages within the F.C.T. rely on these villages for various goods and services, particularly on market days.
32. Most of the villagers interviewed by the author within the F.C.T. were totally ignorant of the role of the F.C.D.A. most of them see their Ward Heads or Village Heads as the most valid constituted authorities.
33. The author comes from Keffi Town in Plateau State. Keffi Local Government is affected by the F.C.T. Decree. Karu and Karshi Districts were part of Keffi Local Government but now partially within the F.C.T.
34. I made Gwagwalada village as my base throughout the three months fieldwork I conducted in the F.C.T.

35. In most cases the extent of interaction among ward and village heads appears to depend more on informal than on formal relationships.
36. This district falls within the priority area of the F.C.D.A. i.e. the area named as 'the accelerated district'.
37. See Alhassan Isa Bawa, Reform and Power in the Nigerian Local Government System: A case study of the Habe Ruling Dynasty of Abuja Emirate (1900-76) Unpublished M.Sc. Thesis, Ahmadu Bello University, 1977, pp.86, 124-134.
38. The District Head of Karu is also a member of the Keffi Emirate Council.
39. When I tried to find out from one of such revenue collectors in Abaji Development Area why the revenue from the F.C.T. continues to go into the treasury of these State governments instead of the Federal Government, he replied in the following words:
"Government money is government money whether Federal or State Government. Is it not one Nigeria? After all the Federal Government has not established any sub-treasury in this area. What do you want us to do? To give free services?"
40. Section 14 of the F.C.T. Decree empowers the Head of the Federal Military Government to make regulations generally for carrying into effect the provisions of the Decree.
41. See F.C.D.A. 3rd Annual Report and Accounts, 1st April 1978 - 31st March 1979, p2.

42. See Abuja - The Plan for the accelerated District, F.C.D.A. Quarterly Pamphlet, March, 1980, p.6.
43. See First Report on the Establishment of a Unified System of Administration for the Federal Capital Territory Produced by the Department of Research and Consultancy Ahmadu Bello University, Zaria, Dated March 1979, pii (This page also contains the terms of reference and the scope of the study undertaken).
44. Ibid. p.154.
45. See F.C.D.A. Third Annual Report and Accounts, 191/4/78 - 31/3/79 p.4.
46. See Section 3(2) of the F.C.D.A. Decree.
47. Ibid. see section 5.
48. See Schedule to the Jos Metropolitan Development Board Edict No. 5 of 1974 S.1(1) (2) see also Fourth Schedule to the Kaduna Capital Development Board Edict No. 8 of 1971, S.1(1) and S.1. (2).
49. See Fourth Schedule to the Kaduna Capital Development Board Edict No. 8 of 1971 S.5(4).
50. Ibid. section 6.
51. See Section 4(2) (h) F.C.T. Decree No. 6 of 1976 op. cit.

52. See The Nigerian Observer, A Daily National Newspaper, July 9th, 1982, p.4.
53. These facts were revealed to the author by the Legal Advisor to the F.C.D.A. Mr. Labaran Jema'a in an interview held with him on the 5th April, 1983 at the new F.C.T. Abuja.
54. See New Nigerian, 21st July, 1982.
55. See West Africa, 7th March, 1983, p.630.
56. This particular idea of getting Urban Development Corporations to be self-supporting is increasingly becoming popular in this area of study. See the following texts: Davey, K.J., Financing Regional Government, New York, Toronto, Chichester, John Wiley and Sons, 1983, pp.112-115. See also Guidelines for Establishing and Administering Land Development Agencies in the Developing Countries, Washington, PADCO Inc. 1973, p.29.

The current view among researchers in urban planning and development is that UDCS should be allowed by the laws establishing them to explore other sources of generating revenue to supplement whatever annual or periodical grants they receive from the central governments.
57. See also section 17 of cap 39:02 Laws of Malawi (Capital City Development Corporation Laws). Sections 15(1) and (2) (a) of Law No. 19 of 1982 Plateau State of Nigeria have conferred on the Jos urban Development Board the power to borrow money subject to the approval of the Governor.
- 57A. These facts are contained in one of the Annual Reports of the CCDC of Malawi. We are however unable to obtain accurate information regarding this because the authority has been wound up in March 1984.

58. For further discussion on the full meaning and different types of executive control of public corporations see generally the following texts:

- (a) J. B. Heath, "Control Systems for public enterprises in Developing Countries: A framework for control systems" in P. Fernandes (ed) Control Systems for Public Enterprises in Developing Countries (1979).
- (b) Yash Ghai, "Alternative Systems of Executive Control" in Public Enterprise (1982) Vol. 2, No. 4.

59. See Bayo Kehinde, "The Politics and administration of Public Corporations in Nigeria", in Adebayo Adedeji (ed) Nigerian Administration and its Political Setting, London and New York, Hutchinson Educational Ltd., 1968, p.97.

60. Mr. J. J. Kadiya was the N.P.N. senatorial candidate for the JOS senatorial District in 1979 but he lost to Mr. W. Pam of the N.P.P.

61. The author interviewed a member of staff of the F.C.D.A. at Abuja on the 29th March, 1983 (This person wishes to remain anonymous) and the following facts were revealed to him:-
That before anyone could get a contract in Abuja, he or she must possess a party card as a sign of loyalty to the government and to the N.P.N. ruling party.

62. Apart from the fact that an unsuccessful parliamentary candidate was appointed as the Minister and Chairman of the F.C.D.A. Board of Directors in 1979, all other members of the board were members of the ruling party. The author happens to know a board director who was also an executive member of the N.P.N. in his local Government Council in Kwara State.

63. See footnote 53 above. This has made the work of the Legal Adviser in F.C.D.A. very difficult. In most cases, before any valuable legal advice can be rendered, so much harm might have been done. If the legal adviser were to sit on the Board he could pinpoint all the legal loopholes in the major policy decisions of the board.
64. See section 7 subsection (4) of laws of Malawi cap. 39:02 (An Act to provide for the Establishment, Development and Administration of a Capital City Development Corporation).
65. This period coincided with the period of my fieldwork in Nigeria (January - April 1983).
66. See The Nigerian Observer, Jan 15 1983.
67. See The Daily Times, April 26, 1983, p.19.
68. See also section 21 of Bendel State Development and Planning Authority (BDPA) Law - Edict No. 3 of 1969, Bendel State, Nigeria. This section requires the BDPA to prepare, each year, and submit to the Governor estimates of revenue and expenditure in respect of the next financial year. This same provision can be found in S.14 (1) of the laws of Malawi cap. 39:02, op. cit.
69. See C. J. Maruma, New Towns in Britain, op. cit. p.169.
70. This forms part II to the First Schedule to the 1979 Nigerian Consitution. See Footnote No. 3 above.

71. These facts were obtained from Mr. Labaran Jema'a The Legal Adviser to the F.C.D.A. in our interview op. cit.
72. This particular information was revealed to me by Mr. Justice A. Aguda himself in an interview I held with him in London on 4th May, 1983.
73. See Section 4(2) (f) of the F.C.T. Decree, op. cit.

CHAPTER FIVE
THE IMPLEMENTATION OF ABUJA PROJECT BY THE F.C.D.A. AND THE
URBAN LEGAL PROBLEMS IN THE PROCESS

This chapter is basically a continuation of the case study of the Planning, Development and Management of the new capital city of Nigeria started in Chapter Four. From our discussion in the previous chapter, it may be recalled that we have highlighted some of the major issues that relate to the legal and administrative guidelines to be followed within the new Federal capital territory. We have attempted to show that the Decree establishing both the F.C.D.A. and the F.C.T. contains neither a clearly defined pattern of administration to be followed nor a unified legal system to be applied within the new capital territory. In this chapter, we shall shift our discussion to the more practical and crucial issues involved in urban planning, development and management.

Although there are many practical legal and administrative issues that often surface in the process of urban development and management, we intend to pay particular attention, in this chapter, to the issues of the nature and scope of the planning law that governs the operation of the F.C.D.A., the Master-Plan guiding the authority and its implementation, the laws that govern land tenure and land administration within the capital territory and their effects on the proprietary rights and interests of the inhabitants of the area as well as the fate of the inhabitants in issues relating to resettlement. Housing needs and policies will also be briefly examined

in the light of national housing policies and how they affect the resettlers and the new immigrants into the capital territory.

This chapter is divided into three sections, section one discusses the planning framework within which the F.C.D.A. is to operate. Planning laws and the practical implementation of the F.C.D.A. Master-Plan are fully discussed in this section. The second section examines the land laws and land administration in Nigeria and how these affect the development of the capital territory. The third section treats issues of compensation due to the inhabitants of the territory and the resettlement policies of the Federal Government. We shall also briefly examine what the future holds for the resettled people and the many immigrants into the territory in terms of housing and general socio-economic prospects.

SECTION A

THE PLANNING FRAMEWORK FOR THE F.C.T.

We may start by looking at the planning laws of Nigeria from a national perspective and how these laws have been able to solve the nation's urban problems in the area of physical planning and development. It is only through this broad approach that we can be in a position to tell whether or not the F.C.D.A. has any adequate and specified planning framework within which to operate.

The failure of the legal system to solve the immediate and most urgent social and economic problems of the developing nations, as highlighted in our first chapter,¹ is felt especially in the area of urban planning and development. The planning laws being applied in most African countries, for instance, are those inherited from the

colonial era. In Nigeria, the first major and the only Town Planning legislation governing urban development was the 1946 Town Planning Ordinance.² This was a copy of the British Town and Country Planning Law of 1932. This legislation made provision for the replanning, improvement, and development of various parts of Nigeria by means of planning schemes and planning authorities.

The scope and powers of this ordinance which was taken directly from Britain and virtually transplanted on the Nigerian soil were very comprehensive. Both the Federal and the former regional governments could initiate 'Planning Schemes' under the provisions of the law. Section 3 of that Ordinance states that the main objectives of planning schemes are generally to control the development and use of the land involved, to secure proper sanitation, amenity and convenience, to preserve places of natural beauty and interest, and generally to protect existing urban and rural amenities. S.13(1) and Parts IV and V of the first schedule of the law make provisions relating to the objectives of co-ordinating and facilitating the construction of public utility services, as well as of conserving and developing the resources of the area concerned.

This same old legislation has been adopted as the model statute by various states in Nigeria in the area of urban planning and development.³ There has not been any significant change in terms of how to plan i.e. structure plan, local plan, relationship between land use and finance planning and the like. It is therefore the same old legal framework that exists. This makes it difficult to apply new ideas and methods in terms of planning and development. But there have been changes in various states of the country in the sense that there are now various UDCs with varying powers and duties which have been

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grafted on to the 1946 legislation. In other words, though the same basic approach may exist, there are some few but significant changes in terms of administration and the current role of UDCs in urban planning and development.⁴ It is however important to observe here that this situation is not peculiar to Nigeria. It is not unusual to find important urban development projects in many countries of Africa today being governed by planning laws that are well over fifty years old. It was observed:

.....over the whole field of urban land policy in country after country we find varieties of the following: former colonial laws often sixty or more years old still in place governing land tenure, land transactions, public health and housing.⁵

It can be seen from the above that the laws currently governing the implementation of urban development projects in Africa and many other developing countries are far from being ideal. Taking a country like Nigeria, it is simply not feasible to expect those rules and regulations of the 1940s to be adequate in governing urban planning and development in the 1980s. This is mainly due to the change in urban population and the influx of people into big towns and cities as already discussed in chapter two. This clearly shows that those rules and regulations of the colonial era have outlived their usefulness in meeting the current needs of the African communities. We may now move to the specific area of identifying the exact planning legislation that is applicable within the new capital territory in Nigeria.

APPLICABLE PLANNING LAWS IN THE F.C.T.

After more States were created in Nigeria, in the year 1976, the country had a total of nineteen States. As earlier indicated in

Chapter Four, the F.C.T. was carved out of three States.⁶ All these States now have their separate legislation governing urban planning and development. The question that readily comes to mind here is: which of the planning laws in Nigeria should be applicable in the process of planning and developing the new capital. Is it the planning laws of Niger, Plateau or Kwara States that should be applicable within the F.C.T. or is it the old Northern Nigerian planning laws that should be applicable.

Our view here is that, since Nigeria now operates a nineteen State structure and since the F.C.T. is an autonomous and very well defined territory distinct from any of the nineteen States, none of the laws mentioned above is valid within the F.C.T. in the absence of an explicit provision in the F.C.T. Decree specifying the particular planning law transitionally applicable. A public corporation like the F.C.D.A. whose main function is urban planning and development requires a clear and definite set of rules to govern its operations in the area of planning and development. As we have indicated in Chapter Four, the provision of S.13 of the F.C.T. Decree is not workable. That section presupposes that the rules governing urban planning and development in all the three States that were carved out as the F.C.T. are the same. Even if the rules are the same we cannot assume that they are always going to remain the same. The Plateau State building rules may, for instance, be different from those of Kwara or Niger and this does not make for uniform standard. This simply means that the F.C.D.A., while effecting development in Karu (formerly Plateau) or Abaji (formerly Kwara) instead of coming out with some standard and uniform set of rules and regulations, may end up applying the building rules and regulations that are currently being applied in these separate States.

According to that section, all laws that were applicable in the territory immediately before the creation of the new Federal capital territory were to be applied in those particular areas until new provisions were made. We find this situation to be unfortunate. Unfortunate in the sense that it has left the F.C.D.A. with no sense of direction as to the specific set of planning laws to be applied in the implementation of this very important project. We may compare this situation with what happened in the course of establishing the Bendel Development and Planning Board in 1969. The Planning laws that were to govern the operation of this Board were clearly spelt out in section 19 of the Bendel Development and Planning law, Laws of Bendel State of Nigeria, 1969. That section provides:

S.19 - The Provisions of:

- (a) The Town and Country Planning Law (Cap. 123)
- (b) Western Nigeria Housing Corporation Law (Cap. 130)
- (c) The Land Development (Road) Law (Cap. 54)
- (d) Any subsidiary legislation, order, enactment and regulations of Mid-Western State of Nigeria made under the said laws mentioned in paragraphs (a), (b) and (c) of this section and those made by Western Nigeria applicable to this State, shall apply to the Authority with the necessary modifications.

There is no doubt that the above provisions have identified the particular planning laws that should govern the entire function of the Bendel Development and Planning Board. It is our view that the F.C.T. Decree ought to have categorically provided an interpretation clause specifying a particular piece or some specific planning legislations that will govern the actual implementation of the Abuja project.

The Kano State Urban Development Board Edict No. 5 of 1976 provides an excellent example of the point we are making. This

legislation was precise in its interpretation clause by stating clearly what it refers to as 'the law' and to what extent that law can be applied in urban planning and development.

Part I - Preliminary of Edict No. 5 of 1976 (The Law establishing Kano State Urban Development Board, Nigeria) has the following provisions:

Section 1 (2)

This Edict shall be read as one with the Town and Country Planning Law and where the law is inconsistent with this Edict, this Edict shall prevail and the law shall to the extent of its inconsistency be void.⁷

Section 2 goes further to provide that:

In this Edict, unless the context otherwise requires -
"the law" means the Town and Country Planning Law
(Cap. 130)

From the above provisions, we can see that the Edict has, in very clear terms, identified the Northern Nigeria Town and Country Planning Law (Cap. 130) as the law to be applied in all matters relating to urban planning and development in Kano State, Nigeria. Also, in the event of any inconsistency arising between "the law" and the Edict, Section 1(2) has clearly provided that the Edict shall prevail. Apart from clearing doubts and confusion in cases of conflict between the Edict and other existing laws, the provisions quoted above have provided the Kano Urban Development Board with the necessary planning framework within which to operate.

As far as the F.C.T. is concerned, we are of the opinion that no planning law is legally enforceable. Despite the fact that the provisions of S.13 of the F.C.T. were said to be transitional the last

civilian administration in Nigeria did not pass any law concerning the physical planning and development of the new capital city. Since all other States in the country are autonomous and quite separate from the capital territory (S.1(3) F.C.T. Decree) the F.C.D.A. has no power to enforce any planning laws, building codes and regulations of any of the States within the F.C.T.

We are surprised by the failure of the appropriate authorities in Nigeria to provide the F.C.D.A. with the required planning framework. It is particularly amazing when one considers the fact that the F.C.D.A. has been given the responsibility for the choice of site for the location of the capital city within the F.C.T. and the preparation of a master plan for the territory as well as land use with respect to Town and Country Planning within the rest of the territory.⁸ It is difficult to imagine how all these responsibilities can be executed in the absence of a well defined planning framework. The Master-Plan which the F.C.D.A. is required to prepare is not going to be implemented in a vacuum. This is why the implementing body (the F.C.D.A.) requires, as of necessity, a well defined set of planning laws to rely upon in the practical discharge of its responsibilities.

This necessarily brings us to yet another very important aspect of planning - the land use plan and its implementation. We may now proceed to examine some of the major objectives of a land use plan and its implementation with a view to exploring how far the F.C.D.A. plan for land use is likely to go in achieving its main objectives. It may be important to start by discussing these objectives from a broader perspective before narrowing it down to the F.C.D.A. Master-Plan.

DEVELOPMENT PLANS

Generally speaking, a land use plan lays down a scheme of how a given planning area shall be developed in the future and what type of activities may be carried on in defined zones as identified on the plan.⁹ In almost all programmes of urban development the authorities concerned find it necessary to subject certain activities to some form of control. Such control may be imposed simply as a measure of restricting a particular activity in the public interest. Such interest may be based on economic, health or security reasons. Sometimes control may be introduced for the purposes of preserving existing ecological environment or protecting places of historical or architectural interest.¹⁰ A good Master-Plan is therefore that which apart from providing a policy framework for future development, serves as a basis for the regulation of development through control over the use of land and buildings.¹¹

One important thing worth mentioning is the exact scope of the development plan in question. Some development plans are more detailed than others. In most cases, apart from emphasising general land uses, the text in a detailed plan also specifies the type of developments which may be erected thereon. It also prescribes the procedure to be followed by persons or bodies corporate desiring to commence any development schemes or projects. It may, in addition, state the penalties likely to be incurred by defaulters. On the other hand, some development plans are fashioned in less detailed terms. This particular type of development plan is seen as a mere guide. In essence, it is a statement or a series of statements expressing a general framework within which the development of a given area should take place in order to achieve certain social and economic objectives.

This type of plan is not only less detailed but also it is less rigid. In most cases it only attempts to predict probable growth and allocate in advance the spaces probably required for various purposes at different stages of expansion.

From the above, we can easily categorise urban development plans into two. First of all, there is the very comprehensive and integrated development plan, and secondly, there is the less detailed and more flexible type. While one may not object to an integrated development plan per se, it would seem unsafe to assume that an all integrating and comprehensively set up development plan will automatically provide the answer to the various complex problems of urban planning and development. In fact, we dare say that no where can any comprehensive development plan work without posing some problems. This is mainly because such development plan tends to be too rigid when it comes to actual implementation. Instead of providing solutions it serves as a potential instrument for complicating issues. A good development plan, to our mind, is that which makes room for flexibilities and modifications as and when necessary. Such a plan should contain a description of a unified general physical design of an urban area, and attempt to clarify the relationship between the physical development policies, social and economic goals, and aspirations of the community on the one hand, and the physical features of the land to which it refers to on the other.

Allied to these issues of the feature and scope of a development plan is the question of its legal status. Before being given a legal status the plan is no more than a set of interesting and no doubt useful ideas about the development of a particular urban area. After being given formal approval it acquires the status of either the local

law governing development or at the very least the most important guide to what is permissible. Legal status is therefore one of the important requirements of any urban development plan before its implementation.

There cannot be a more crucial stage of a land use plan than the period of its implementation. This is because that is the time when both the policy-makers and the planners will start assessing the results of their efforts. It also marks the period when theoretical expressions of planning begin to acquire concrete shape and meaning. In other words, both the policy-makers and the planners can, and do, have the opportunity to ascertain, at the time of implementation, whether the details of their proposed development project are practical enough, and if so, whether they are enforceable. The legal effect of a plan is determined basically by the nature of the enabling statute. That is to say, when the enabling act lends immediate binding force to certain aspects of a plan, any wilful contravention of any provision contained in such a plan or scheme of development constitutes an offence. If on the other hand, the enabling legislation to a particular programme of urban planning and development does not confer the necessary legal status on the plan, such a plan is vulnerable to challenge on legal principles¹². We must however, observe one important point here. That is the fact that legal status created by a plan fundamentally differs from other legal status created under ordinary substantive legislation. As earlier mentioned, plans are meant to be flexible and prone to changes as and when necessary. Their status, though permanent, should be that which allows for change from time to time depending on the prevailing social and economic circumstances or the overall aims and objectives of the

particular development scheme involved. For instance, there can be no guarantee that anything permissible under a plan will forever remain so nor is it impossible to permit, as a development scheme progresses, development in areas that were initially demarcated as prohibited areas. We may illustrate this point further with a hypothetical example.

A particular development plan initially indicates that area 'A' is zoned as industrial land, area 'B' is agricultural zone and area 'C' is residential. The plan has been gazetted and all procedures necessary for its adoption have been followed.¹³ As the development scheme progresses however, it becomes obvious that area 'A' which was initially zoned as industrial land, is the most fertile area agriculturally. This is where flexibility is applied. The advisable thing in this circumstance is to simply permit agricultural development in an area which was hitherto zoned as industrial land (In this case Area A). This example shows some activities can be moved to another zone without necessarily affecting the main aims and objectives of the development scheme.

Having analysed the main features scope and legal status of a land use plan, we may briefly examine the Master-Plan for the physical planning and development of the F.C.T. in Abuja with a view to identifying its scope and legal status.

THE F.C.T. MASTER-PLAN

The International Planning Associates (IPA) were commissioned by the F.C.D.A. in 1977 for the technical planning and the production of a Master-Plan for Abuja, the new capital city and its regional grid.

According to the terms of reference, the master planning included a review of relevant data, the selection of a capital city site, the preparation of regional and city plans and an accompanying design and development standards manual. This Master-Plan was produced in 1979 to enable the F.C.D.A. discharge its responsibilities of carrying out a survey and demarcation of the boundaries of the F.C.T.¹⁴ to correspond with the boundaries of the land area of the F.C.T. and of preparing a Master-Plan for the F.C.T. and of land use with respect to town and country planning within the F.C.T.¹⁵

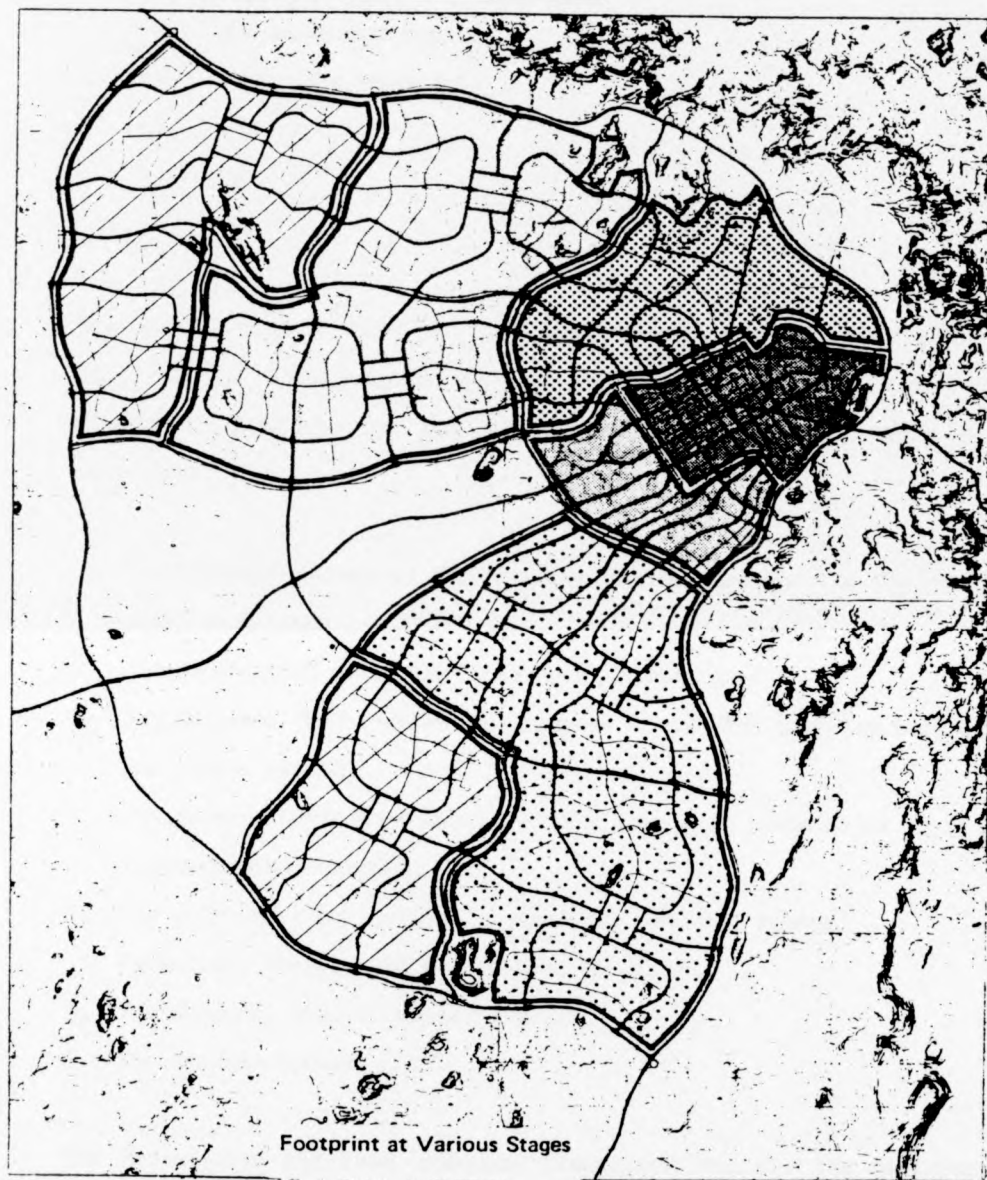
The Master-Plan was approved in the same year (1979) by the Federal Military Government. It defines the broad strategy for the development of the new Federal capital. According to the Master-Plan, the capital city is planned to be developed in the following phases:







PHASE	PROJECTED POPULATION
1	50,000
2	92,000
3	230,000
4	610,000
5	1,050,000
6	1,600,000

(see Figure 6 Master Plan for Abuja)

The detailed land use planning and site development plan (SDP) of the Phase 1 of the capital city has been completed. Phase one of the city is made up of six urban districts as follows:

FIGURE 6: MASTER-PLAN FOR ABUJA



-  Phase 1 - Population 50,000
-  Phase 2 - Population 92,000
-  Phase 3 - Population 230,000
-  Phase 4 - Population 610,000
-  Phase 5 - Population 1,050,000
-  Phase 6 - Population 1,600,000

- i. Central area
- ii. Accelerated District
- iii. North-West District
- iv. BCDEF
- v. MNOP
- vi. IJKL 16

The central area is meant for the construction of major public offices and national institutions as well as residential housing for top government functionaries and private individuals. The central area comprises.

- 1. The National Assembly, The Presidential Complex and the Supreme Court buildings.
- 2. The Ministerial and other government buildings.
- 3. The National Hall and National Square to provide shopping complex, and parade ground.
- 4. The Central Business District - This area will house major business organizations.
- 5. The cultural centre: This is where the National Mosque, Cathedral, Theatre and Museum will be built.
- 6. The National Sports Complex and
- 7. The Central Market. 17

The Master-Plan has made adequate provisions for all the necessary infrastructural facilities needed in the new capital city. The Accelerated District for instance, is the priority development area and it is designed to cater for a population of almost 50,000. The

Master-Plan has also proposed a railway line passing north-south through the accelerated District to link the new capital city with Lafia town to the East. There is similarly a proposition for an International Airport in Abuja. This Airport according to the Master-Plan is to be located on the Western edge of the Gwagwa Plains (see Fig. 3 in Chapter Four). As a matter of fact, this Airport started operating since April, 1983¹⁸.

From the foregoing, the reader may observe that the Abuja Master-Plan is fairly comprehensive. It has provided a broad strategy for the development of the capital city in phases with a projected target population. Similarly, it has made provisions for necessary infrastructural facilities within the F.C.T. The only single most important question that seems to remain unclear is the legal status of the Master-Plan.

LEGAL STATUS

As far as the F.C.T. Decree is concerned, it does not seem to confer the necessary legal status on the Abuja Master-Plan. The only section of the Decree which makes explicit reference to the Master-Plan is Section 4(1) (b) where, in enumerating the functions and powers of the Board, it was stated that, "the authority shall be charged with the responsibility for the preparation of a Master-Plan for the capital city and of land use with respect to town and country planning within the rest of the capital territory". Apart from this provision, there is no other provision in the Decree which lends immediate binding effect to the Master-Plan. Furthermore, the Federal Government did not publish its approval of the Plan in the official

Government Gazette. In the absence of this legal status it is our view that the F.C.D.A. will find it very difficult to cope with the inevitable problems of contravention of the Master-Plan by private developers in the F.C.T. This simply means that the private developers can quite rightly challenge the F.C.D.A. on legal principles in the event of the Board attempting to stop them from carrying out their development projects. We may however examine the provisions of the Decree which relate to requiring private developers to conform with the approved terms of the F.C.D.A. in carrying out their development and what happens in the event of non-conformity with the Plan.

DEVELOPMENT CONTROL IN THE F.C.T.

According to Section 7(1) of the F.C.T. Decree, development by persons or bodies corporate within the F.C.T. as from the commencement of the Decree, can only be embarked upon after a written approval has been granted by the F.C.D.A. Also, in an attempt to be precise, the Decree goes on to define "Development" and "Interim Development". Within the meaning of S.7(3) of the Decree, "Development" refers to the carrying out of any building, engineering, mining or other operation in, on, over or under land or water, or the making of any material change in the use of any land or building thereon or of any stretch of water whatsoever. This same section defines "Interim Development" as meaning such temporary development as may be authorised by the F.C.D.A. of any land comprised in the F.C.T. between the date of the commencement of the Decree and the coming into

operation of any of the F.C.D.A.'s schemes of development for the particular portion of land.¹⁹

It can be seen that the law here completely prohibits any person or body within the F.C.T. from carrying out any development as defined above within the meaning of the Decree, without the prior written approval of the F.C.D.A. The next relevant question one may be inclined to ask here is: what happens if these provisions are violated by private developers? The answer to this question is found in the same Decree. The Decree empowers the F.C.D.A. to require every person who, otherwise than in pursuance of an approval granted or a general or special order with respect to interim development made by the authority proceeds with or does any work within the F.C.T. to remove any work performed and reinstate the land or, where applicable, the building, in the condition in which it was before the commencement of such work, and in the event of any failure on the part of any such person to comply with any such requirement, the authority shall, cause the necessary work to be carried out, and may recover the expenses thereof from such person as a debt.²⁰

This particular power given to the F.C.D.A. to require any person or organisation to reinstate any land or building in the condition in which it was before the 'illegal' development raises a number of practical problems. Even though we acknowledge the fact that the F.C.D.A. has the right to require all developers to conform with its approved plans we think carrying development control to such an extent may not necessarily be the best way of ensuring orderly development. While we do not wish to condone any wilful contravention of development control rules and regulations, we believe that an order for total demolition and reinstatement of a piece of land in the

condition in which it was may amount to a waste of human skill and material resources. Considering the fact that total demolition of a building is an exercise that involves costs (which may be very high) we think that Section 7(2) of the F.C.T. Decree is rather harsh. It is harsh because it confers too much power on the F.C.D.A. This particular power can be used by officials of the Board as a tool for settling personal scores or making life unnecessarily difficult for the ordinary urban poor whose resources for housing are extremely limited. In fact, even in a situation where the private developer can afford to meet the huge financial burden that such an order entails it is hardly justifiable to compel anyone to reinstate a piece of land in the condition in which it was before. We therefore feel that such powers should be provided for only with caution and the idea of compelling a developer to reinstate a piece of land in its previous condition, as categorically stated in S. 7 of the F.C.T. Decree is quite negative and counter productive. Even without going to such an extent S.7 is still open to abuse. Take for instance, where the officials of the authority may choose to use the development control mechanism to refuse genuine planning or building permission. Simple application for permission to develop a piece of land in Nigeria, and indeed in many developing countries,²¹ can take weeks or even months without approval. This is because most corrupt officials make the process of reviewing such applications so cumbersome that it serves as a clog in the wheel of progress. In most cases private developers experience unnecessary delays in getting planning permission in the name of development control. This does not only restrict meaningful development but also in the long run kills any development initiative. Instead of serving as a check against

unplanned and illegal development the nature of development control legislations coupled with the attitude of some officials of planning authorities in the developing countries tend to frustrate the genuine efforts of private developers. The policy-makers and the planners who are on the field to implement development plans tend to forget that development control, once carried beyond reasonable limits can only serve the interest of the urban elites. No area of urban planning and development provides a better example of this point than the area of building standards and regulations. We may briefly shift our discussion to this area of planning.

BUILDING STANDARDS AND REGULATIONS

In both the advanced and the developing nations there is a glaring inequality in terms of the financial resources of the urban population. Taking Nigeria as an example, one can easily conclude that not all the inhabitants and immigrants into the new Federal capital territory can afford the finance to build up to the standards the government may set. This is one of the crucial issues that the F.C.D.A. should address itself to. It must realise the fact that it is no good coming out with standards that are too high for the average Nigerian settling in Abuja to attain. The building regulations should not be fashioned in a rigid and complicated pattern. The F.C.D.A. must ensure that all building regulations are not only economically realistic but also of affordable standard to the low-income group who are invariably the greater majority in any capital city. This particular issue has always generated comments and analysis from lawyers and academics in the area of planning and development. It was observed:

Building standards and regulations have to be pitched at a level that owner-builders can understand, follow and afford, i.e. they should require no more than a technically simple and cheap initial house to be built. This should not be regarded as legalising slum building; rather it is a way of reducing the spread of illegal and/or ill-built unhygienic settlements by providing a realistic and affordable alternative to low-income residents in and immigrants to the urban areas since the long term aim of the scheme is to move from a basic cheap to an improved house built with lasting materials, what might at first sight appear to be an area of below standard development will ultimately develop into an area of reasonable development.²²

The above quotation clarifies a number of issues. First of all, it shows that rigid and complicated building codes apart from setting very high standards for the average owner-builder, tend to limit the freedom of builders and designers alike. Secondly, this quotation draws our attention to the views of those who try to assert that flexible and simple building standards and regulations tend to condone slum building. Our view is that this assertion is, at best, a half-truth and at worst it fails to face up to the fact that it is not how attractive the physical structures are, but on the contrary, it is the ability of such physical structures to solve the ever increasing problems of the bulk of the urban population that really matters.²³ In other words, people who hold this opinion are those who place higher premium on the structure of land use and physical development than on the people for whom development is meant.

It is therefore clear that no matter how hard we try to identify and solve practical urban problems, we shall fail to meet the needs and aspirations of the urban poor unless we accept high standards and rigid building legislations as being in part responsible for shanty towns and the so-called squatter settlements in and around our major cities. This is simply because such building rules and regulations that set high standards totally ignore the housing requirements and

resources of the economically and socially disadvantaged members of the society. Instead they promote the high taste and reflect the values of the few urban elites. Commenting on the same issue Nwaka wrote:

..... such plans often reflect the values, need and life-styles of the privileged few, but do not sufficiently address themselves to the need of the less privileged majority who are much more concerned about low-cost housing, rent subsidy, job opportunities and better pay, the ability to acquire secure titles to property, and credit facilities to develop them, easy access to medical and related facilities for themselves and their families, and better education on how to improve their living conditions. The 'high' standard set by planners for development is often abstract from the social and economic realities of the people for whom development is planned.²⁴

One thing that may strike the reader at this point is the lack of a clear-cut set of building rules and regulations that apply to the new capital territory. As earlier observed, it is not clear which building rules and regulations are applicable within the F.C.T. This is particularly surprising because with all the construction work going on in Abuja one would have thought that the F.C.D.A. would come out with a set of specific building rules and regulations to be followed by both public and private developers. In fact, even the official F.C.D.A. contract agreement format for construction within the F.C.T. (see Appendix B) is completely silent on which building regulations are to be adhered to by those undertaking physical development within the territory. This clearly shows that the provision of S.13 of the F.C.T. Decree will pose some practical problems as earlier mentioned. There cannot be a uniform set of building rules and regulations governing urban development within the F.C.T. if the provision of S.13 of the F.C.T. Decree continues to apply. The F.C.D.A. in our view must come out with new set of rules and regulations governing physical development within the F.C.T.

These rules must also be the simple and flexible type which will set reasonable standard and at the same time conform with the economic and social status of the urban poor.

From the foregoing, it is clear that the urban poor are in a very disadvantageous position as far as social and economic status is concerned, and one of their hopes may be a more appropriate set of rules. Apart from rules and regulations relating to building standards, land law and land administration within the urban area significantly determine the social and economic well being of the urban poor. We shall now move to the next section of this chapter where we intend to explore and analyse the laws that govern the acquisition, use and disposition of land in Nigeria and their effect on the development of the new capital territory.

SECTION B

LAND TENURE AND LAND ADMINISTRATION IN NIGERIA AND THE DEVELOPMENT OF THE F.C.T.

It may be recalled that we have, in chapter three, attempted to illustrate the place of land tenure and land administration in the process of urban planning and development in a broad perspective. In this section, we shall once more touch on some of these issues but in a more specific manner. Our main focus will be on the laws that govern the acquisition use and disposition of land in the F.C.T. and how they directly affect (a) the practical execution of the Abuja project by the F.C.D.A. and (b) the proprietary rights and interest of the inhabitants of the territory.

Any discussion of land law and land administration in the F.C.T.

can only be complete when examined from the context of the land tenure system of Nigeria as a whole. This will bring into focus some of the enormous land use problems and confusions that prevailed in the Nigerian land market long before the capital territory was created. Secondly, approaching this issue from a national context will enable us to make a survey of the major statutes that have, over the years, affected the shaping of land law and land administration in both the northern and southern parts of the country. Also, it is only through this national approach to the issues involved that we can fully appreciate the significance of the structural changes in tenurial arrangements introduced by the current legislation (The Land Use Decree of 1978).

SOUTHERN NIGERIA

In the southern part of Nigeria, lands were solely owned by the towns or villages as land belonging to the community or by some family heads on behalf of their families.²⁵ This was governed by customary land tenure practices as far back as the pre-colonial era. The first legislation that attempted to restructure this arrangement was the Public Lands Ordinance of 1876²⁶ which was later re-enacted with modification as the Public Lands Acquisition Act of 1917.²⁷ Following the introduction of the federal structure of government in Nigeria, the Act became a regional law.²⁸ This legislation empowered the government to acquire land compulsorily for public purposes subject to the payment of compensation to the expropriated owners. This power of compulsory acquisition was also given to the Nigerian government in the South by other statutes, e.g. the various

Town and Country Planning Laws in the Western Region (later States) of the South which allowed compulsory acquisition by governments for schemes of development.²⁹ The advantage of all these laws on the part of the government was that they facilitated access to the land for development projects. In the absence of such legislation the government would have been deterred by conflicting claims to the land by various community and family heads.

Another statute which needs mentioning is the Communal Rights Vesting in Trustee Law of Western Nigeria.³⁰ This law was meant to reconcile the customary law relating to the management of communal lands with the realities of modern times in order to curb abuses by traditional rulers who were building economic empires for themselves out of the disposition of communal land. The law provided for the divesting of the traditional chiefs of their customary powers of management and for the vesting of such rights in a body of trustees appointed by the government under the powers conferred by the law. The law made the trustees accountable for the proceeds of dealings in communal land thus putting an end to doubts as to whether such a duty existed under customary law. One important point to note here is the fact that the right to bring an action for breach of trust was vested in the Attorney-General. Also, this law was not of general application within the Western Region of Nigeria. It was made applicable only to an area in respect of which the Commissioner for Local Government had made an order called a vesting order.

Apart from these few statutes there was no more effort made to reform customary land law in the southern part of Nigeria³¹ and up to the enactment of the Land Use Decree of 1978, land was, for the most part, held by communities and family heads in the South. We may now briefly examine what was obtained in the northern part of the country.

NORTHERN NIGERIA

Although the shaping of land policy in northern Nigeria was as a result of many historical events, we shall mainly address ourselves here to the land tenure law of Northern Nigeria, 1962 and its subsequent amendment in 1963.³² This is because it is not within the scope of this thesis to go deeply into those historical factors like the Fulani Jihad, the Fulani Emirs of the North and their claim over all lands in their conquered area. Secondly the 1962 Land Tenure Law was the law applicable in the whole land area that is now the Federal Capital Territory in Nigeria. This simply means that it is the particular legislation that sets out rules and regulations that are directly relevant to our discussion.

The 1962 law attempted to regulate land tenure in the former northern region of Nigeria. It stipulated that all lands in the north (including what is now F.C.T.) belonged to the indigenes of the region, vested ultimate control and disposition in the Ministry charged with responsibility for land matters (Ministry for Lands and Survey), with the Minister holding and administering the land for the common benefit of the local population.³³

According to this legislation, the most extensive interest which a person could have in land was a right of occupancy, i.e. a right to the use and occupation thereof, which may be customary or statutory. Thus there were two forms of rights or interests recognised by the law. A "statutory right of occupancy" could be granted to 'natives' or non-'natives'³⁴ of northern Nigeria and a "customary right of occupancy" was the title of a local community or of indigeneous members of a community occupying land according to local law and

customs. In respect of customary occupation of land, the minister relinquished his authority to local administrators - The Emir, the Village Heads or the District Heads.

Also the Minister was empowered to revoke a right of occupancy for "good cause".³⁵ In the event of such a revocation the holder or occupier was, in certain circumstances,³⁶ entitled to compensation for unexhausted improvements and for disturbance. Such "good cause" under the statutory right of occupancy includes non payment of rents, rates, taxes and dues imposed on the land. It is important to point out here that the 'good cause' for which a northern state government could revoke occupancy rights included requiring any piece of land by the government (whether occupied or unoccupied) for public purposes. In the event of any right to land being revoked because of public need for the land, the holders and occupiers were entitled to compensation for the value at the date of the revocation "of their unexhausted improvements and the inconvenience caused by their disturbance" (see S.35 (1)). This also applied to the revocation of customary rights of occupancy by a local authority.³⁷

As far as alienation of land is concerned, it can only be done with the consent of the Minister or other appropriate authority. The rules on this subject were contained in sections 27 and 28 of the Statute. Section 27 provided that it was unlawful for a customary right of occupancy held by a native to be alienated by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise howsoever to a non-native without the consent of the Minister first had and received. If, however, the alienation was to another native, all that the law required was the approval of the Native Authority.³⁸ in whose area the property was situated. As for

the devolution of rights upon inheritance that was to be regulated by existing local law and custom in case of indigenes of the North, Section 28 went on to make provision that alienation of a statutory right of occupancy by any of the above forms required the consent of the Minister, except in relation to the creation of a legal mortgage where consent has been given to an equitable mortgage and in cases where title was transferred back to the mortgager upon repayment of the debt.³⁹ According to S.34 (2)(b) and (3)(e) violation of either S.27 or 28 entitled the Minister to revoke the right of occupancy without compensation and, in respect of a statutory right of occupancy, the Minister might also impose a penal rent for unlawful alienation, the acceptance of which was not to be deemed a waiver of his right of revocation.⁴⁰ This was the situation in the northern part of Nigeria before the 29th March 1978.

From this brief description of the land tenure system in the southern and northern part of Nigeria, one conclusion can easily be reached: That is the fact that there was a total absence of a clear-cut national policy on land. This dual land tenure system which the country operated for so long had very many negative consequences on development schemes. Prices of land were incredibly high and this affected not only individual developers but also the Federal and various State governments wanting to initiate and execute development projects for the benefit of the general public. It was reported:

Government requires land on increasing scale for its development projects... Although legislation exists empowering government to acquire land compulsorily for public purposes, it has become difficult to do so at reasonable cost in some of Nigeria's urban centres. Several projects in the second development plan have failed to take off because of the difficulty of obtaining land in major urban centres. Even where land is readily available the price is often prohibitive.⁴¹

With this as a background, it can be seen that the pre-1978 situation in the Nigerian land market was most unsuitable for any major urban development project to be undertaken by both the private and the public sectors. In fact, Nigeria's nationally uncoordinated land tenure system was a major constraint to desired societal goals. This is because, we believe that, for any country that aspires to a position where it can create a free, equal and egalitarian society, there cannot be a better starting point than ensuring a comprehensive and dynamic national land policy.⁴² Ignoring the need to have an effective land policy will likely result in the inability of that country to feed itself and the inability of both public and private sectors to provide sufficient shelter for the people.⁴³ This perhaps explains the steps taken by the Federal Government in Nigeria to streamline the land holding procedure and regulate the various land transactions that facilitated inflationary trends and frustrated public and private development efforts all over the country. We may now examine this very important legislation - The Land Use Decree No. 6 of 1978⁴⁴ - (Hereinafter referred to as the LUD) and its effects on urban development generally and the development of Nigeria's new capital city in particular.

THE LAND USE DECREE - (See Appendix C)

This Decree was promulgated in 1978. It placed land ownership in the hands of State governments throughout the country. This Decree does not differ in principle from the 1962 Land Tenure law. As far as the former Northern Region is concerned, it is in fact simply a validation of the 1962 legislation.⁴⁵

The principle of State ownership of land is asserted in Section 1 of the Decree which provides:

Subject to the provisions of this Decree all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Decree.

Two things are clear from this provision:

- (a) That the previous owners of land-communities, families or individuals are divested of the ownership of their land, whether occupied or unoccupied;
- (b) That the State is now the unit for the purposes of ownership of land.⁴⁶ It is also clear that the State Governor in each State now owns the legal title to the land subject to the provisions of the Decree.

The Federal lands are however excluded from the lands vested in the State Governor. Section 49 expressly provides that "nothing in this Decree shall affect any title to land whether developed or undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Decree and accordingly such land shall continue to vest in the Federal Government or the agency concerned". It is important to note that "agency" includes any statutory corporation or company wholly owned by the Federal Government of Nigeria (S.49 (2) (2))⁴⁷. The section that is directly relevant to our discussion here is Section 50 (2). That section provides that the powers of a State Governor under the Decree "shall in respect of land comprised in the Federal capital or any land held or vested in the Federal Government in any state be exercised by the Head of the Federal Government or the Minister designated by him in

that behalf". What we can deduce from this particular provision is the fact that 'land held by the Federal Government' includes land allocated to the Federal Government by the State Governor after the commencement of the Decree or before the Decree. One important feature of this Decree which distinguishes it from the 1962 Northern Nigerian Land Tenure Law is the fact that the Governor (under the Decree) holds title to land in trust for all Nigerians and not only for the indigenes of the State.

PRIVATE INTERESTS

One important point that requires clarification is the issue of private interests. It should be noted that, the fact that the LUD has vested all lands in the State and abrogated all existing land legislation does not mean that private interests in land have suddenly been abrogated. The LUD allows all Nigerians to hold an interest called a right of occupancy. This right of occupancy may be statutory or customary. The use of the term right of occupancy however differs significantly from that of the Land Tenure Law of Northern Nigeria of 1962. According to this new legislation, a right is statutory when it is one granted by the Governor. It is customary when granted by a local government in a rural area. S.5 empowers the Governor to grant a right of occupancy to anyone in respect of any land whether or not in an urban area; while S.6 empowers the local government to grant customary rights of occupancy.

As far as private interests are concerned, the LUD recognises all existing rights and interests in land which were vested in persons before the commencement of the Decree. Sections 34 and 35 deal with

existing rights in an urban area whilst section 36 deals with those in a non-urban area. S.34 provides that where land in an urban area was vested in a person before the commencement of the Decree, the land should continue to be held by him as if he was a holder of a statutory right of occupancy issued by the Governor under the new Decree. However, in the case of undeveloped land where a person in whom it was vested before the LUD held more than half hectare the holder is only entitled to hold in the form of a statutory right of occupancy one plot or portion of the land not exceeding half hectare. All rights in respect of the excess were extinguished and taken over by the Governor.

In the case of land in a non-urban area, only existing rights over land which was, at the commencement of the Decree, developed or which was being used for agricultural purposes were recognised. Such land should continue to be held by the person concerned whether the right was derived under customary law or not as if he was a grantee of a customary right of occupancy issued by the local government. Thus in relation to grants made under powers given by the LUD, the distinction between statutory and customary rights lies in whether the grant was made by the Governor or Local Government. This distinction between an urban and non-urban area is therefore very crucial to the holder of a right of occupancy. It is however important to observe that the LUD has conferred on the Governor (administratively) the power to determine what constitutes an urban area. S.3 provides thus:

Subject to such general conditions as may be specified by the National Council of States, the Governor may for the purposes of this Decree by order published in the Gazette designate the parts of the area of the State constituting land in urban area.

All said and done, it must be observed that having a dynamic national land policy is one thing and providing an effective mechanism for its administration is quite another. Thus, one question remains unanswered in our discussion so far, i.e. how does the Land Use Decree affect urban development in Nigeria generally and within the F.C.T. in particular? In attempting to answer this question many other relevant questions will inevitably emerge. Prominent among some of the general questions that we must necessarily provide answers to are (i) Is the LUD yet another legislation with a laudable goal that is unlikely to be fulfilled?; (ii) considering some of the main provisions of the LUD highlighted above and given the huge demand for housing and related facilities within the F.C.T., is the legislation capable of solving the enormous land use problems that are bound to arise in an urban area like the F.C.T.? (iii) Given the bureaucracy's reputation for redtape and corruption would it be wrong to suppose that the LUD represents a statute that is prima facie comprehensive and dynamic in outlook but that which will in the final analysis be vulnerable to negative use by exploiting some of its loopholes? These and several other questions can only be answered adequately when we are fully acquainted with the nature of land tenure practices and land use that existed in the vast portion of land now declared as the new capital territory.

LAND TENURE PRACTICE AND LAND USE IN THE F.C.T.

Before the LUD was enacted land tenure in the F.C.T., as in other parts of Nigeria, was governed by customary rules, statutory legislations and established codes of conduct.⁴⁸ Our investigations

in some selected villages⁴⁹ within the territory indicate that under the customary land tenure arrangement, land was generally regarded as the property of the community. Final authority in land matters was vested in the village head. As the head of the village he was the principal custodian of his community's right to land and he was responsible for overseeing land acquisition in the village. Also all land disputes were settled by the village head. If 'strangers' (people from outside the community) wanted to establish farms within his area of jurisdiction, it was his responsibility, as the village head, to supervise allocation of farm land to such strangers.

According to the customary rules of most of the villages within the F.C.T., the village head had no superior claim to land. By virtue of their membership of the community all villagers had equal rights to the land. The most commonly used method of ascertaining rights to land was on the basis of first come, first served. Such rights could be established by simply opening up land over which no prior claim has been established. These rights could be held in perpetuity and could be transferred automatically through inheritance.⁵⁰

One important feature of this customary land holding within the F.C.T. was easy access to land. All strangers or non-members needed to do was to identify any land over which no prior claim was established. Once the village head became aware of their intention to settle and farm in that village a suitable farm land would be allocated to them. This was the land tenure practice that was predominant within the F.C.T. Except for big settlements like Gwagwalada and Karu, land holding by way of statutory right of occupancy as provided in the 1962 Northern Nigerian Land Tenure Law was not common within the F.C.T.⁵¹ Several reasons may have

accounted for this: First of all, this area was very remote and far away from any major urban centre in Nigeria. Secondly, the population in this territory were living in scattered villages and small settlements, each settlement being surrounded by tracts of unused land and bush. This may also not be unconnected with the nature of land use in the area. We may briefly examine what were the main uses of land in this territory before the coming of the Federal Capital.

LAND USE IN THE F.C.T.

One of the main features of the F.C.T. is that the population is relatively sparse. This makes land plentiful. This simply means that the man/land ratio is such that farmers in this area can quite conveniently use plenty of land and rotate their farming from plot to plot.

The main land use in this area is farming. The farmers use the old traditional method of farming. There was (at the time of our field work) no evidence of mechanical or animal power being used in the farming system. One important point worth mentioning is the fact that, in spite of its relative isolation and lack of access to modern farm inputs, this area is self-sufficient in food.

Apart from agriculture, land in this territory is used for grazing. Nomadic Fulani are found across the territory mostly in the dry season. There are also few areas where one finds herds of cattle grazing the fields all the year round. With the creation of the F.C.T. therefore, the Fulani herdsmen face a very serious problem: loss of some valuable grazing areas and most likely cattle routes and tracks.

Also being a large area that is forested and bushy, the F.C.T. provides the firewood needed by its population for cooking. In fact, some of the women in this area earn money by collecting firewood and selling it to traders who in turn transport it to the urban areas where firewood is a scarce commodity.

From this brief description of the land tenure practices and land use within the F.C.T. before the commencement of the LUD, one thing is, hopefully, established. That is, the fact that customary system of tenure was the predominant mode of land holding and agriculture was the main land use within this area. What then is the effect of the LUD on the proprietary rights and interests of these numerous families and communities whose ownership of land was based almost entirely on the principles of customary land tenure? In other words, does the LUD recognise these rights and interests within the F.C.T. or does it mean that with the coming of the LUD all the families and communities within the F.C.T. are automatically divested of their rights and interests? We can only argue this by looking at the relationship between the LUD and customary system of tenure.

THE LAND USE DECREE AND CUSTOMARY SYSTEM OF TENURE

It could be argued that the LUD simply introduces another form of communal or family ownership of land within the F.C.T. (and in the country in general). As earlier explained, by virtue of S.1 of the LUD all land in the country is to be held by the Governors for the people. These Governors could be said to have stepped into the shoes of the family and community heads. Furthermore, the concept of trusteeship adopted by the LUD seems to follow the position of the

chief or head of a family under the customary law. On the other hand, it has been claimed that the LUD is a piece of legislation that abolishes the customary system of land holding.⁵²

As far as we are concerned, the simple fact is that the LUD makes no special provisions regarding customary law. To this extent, we cannot see any truth in talking about an outright and direct abolition or confirmation of customary system of tenure by the LUD. However, in view of the general provisions of the LUD, we are of the opinion that the position of customary land holding is, to some extent, affected by the Decree. For instance, absolute ownership of land is now taken away by S.1 of the Decree from the citizens and vested in the Governor. Also under Sections 34 and 36 this absolute ownership is converted into a mere right of occupancy. The most important point to note here is that even though customary methods of holding land may survive the Decree, it will now only be in the form of enjoying simple right of occupancy which is revocable under the Decree.⁵³ This however does not, in our opinion, mean that communal or family land holding is insecure under the Decree.

Having said this, we may now examine how the communal and family ownership that was predominant in the F.C.T. is affected by the LUD.

Going through the LUD, we are convinced that the communal and family owners of land within the F.C.T. have every reason to feel secure.⁵⁴ In some parts of the Decree references to communal and family forms of tenure are made in a manner which suggests that it assumes the existence of such institutions and intends them to continue.

For example, S.29 dealing with compensation upon revocation of a right of occupancy provides in subsection 3:

If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid -

- (a) to the community; or
- (b) to the chief or leader of the community in accordance with the applicable customary law; and
- (c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.

There can be no doubt whatsoever that this provision is an indicator to the fact that the LUD accepts land holding by communities even though this may only mean holding a right of occupancy as opposed to holding ownership of the land. Whatever name is given to the right does not, in our opinion, really matter in so far as the same incident can attach to it under customary law. Thus the various family and community heads within the F.C.T. can, by virtue of S.29 (3), claim compensation when and if the F.C.D.A. chooses to acquire their family/communal property.⁵⁵

Section 50 of the LUD goes to confirm this viewpoint. In that section, a customary right of occupancy is defined as the right of a person or community lawfully using or occupying land in accordance with customary law. There seems to be emphasis on two things - (i) the declaration by the Decree that the community could hold a customary right of occupancy and (ii) that such right of occupancy is to be enjoyed in accordance with customary law. The full purport of the above provisions is, to our mind, that the sole law which must govern the enjoyment of a customary right of occupancy must be the customary law of the area in which the land is situated.⁵⁶ For the purposes of our discussion therefore it is the rules of customary law in the F.C.T. as modified by the LUD, that will govern the enjoyment of customary rights of occupancy by the inhabitants of this area.

It is however important to note here that a number of practical problems often arise in the F.C.T. as a result of other provisions of the LUD. Take for instance, S.6 which stipulates that the grant of the right must now be by Local Government and S.21 which requires the consent of the Local Government for effecting any transfer of such right (The consent of the Head of the Federal Government or Minister for F.C.T. in the case of Abuja). Let us take a practical example:

There are people who occupied a piece of land in Abaji village (formerly part of Kwara State) in accordance with the customary tenure system of that area before the LUD. Now Abaji village is part of the F.C.T. The LUD does recognise the rights and interests of these people. The vital question here is: Does it mean that the chief or head of Abaji community who, acting in accordance with the customary law of Abaji, allocated that communal land to his people has now lost all his powers? Also, regarding consent, could it be said that there will now be a case of double consent, i.e. first by the chief in accordance with the customary law and then by the Minister for F.C.T. in accordance with the LUD?

Perhaps it was in recognition of this absurdity that the LUD requires a land allocation advisory committee (hereinafter referred to as the LUAC) to be set up for each local government to advise in matters relating to the control and management of land in that area.

Our discussions with a number of villagers in Abaji and some F.C.D.A. officials reveal the following facts: Since the villagers in the first place did not own their land absolutely as individuals but only possessed and occupied it in accordance with the rules governing the customary land holding practice in Abaji village or community, their position remains unchanged.^{56A} All that happens now is a change

of landlord. That is, their former overlord was either a family or community head in Abaji village. Now their new landlord is the Minister for F.C.T. (S.50 (2) LUD) acting on behalf of the Head of the Federal Government. This simply means that the provisions regarding consent in the Decree need not bother the villagers since they normally (under customary law) needed the consent of their family or community head for any alienation.⁵⁷ The only thing that appears to slightly affect their position is that while under customary law they held their land in perpetuity subject to good behaviour,⁵⁸ they now stand the risk of losing some of the land. This is because if their land now falls into an urban area (and most of the lands in the F.C.T. are now bound to) they may not be able to retain more than half hectare unless the same is developed.⁵⁹ If on the other hand their land does not fall into an urban area, their position may remain the same. This is mainly because Section 36 which enables them to continue their possession does not fix any duration for their possession and they can therefore continue to hold the land in perpetuity subject to the provisions contained in S.28 regarding revocation.

We have attempted, in the foregoing paragraphs, to highlight some of the main provisions of the land use Decree in so far as they affect the proprietary interests of the inhabitants of the F.C.T. in particular and Nigerians in general. Opinions may differ as regards the practical implementation of the LUD,⁶⁰ particularly when we consider how good statutes are often negatively used by exploiting their loopholes. It was observed:

.... Similarly, land reform has rarely resulted in extensive land re-distribution; too often legislative loopholes have allowed landlords to retain much of the land, notably the most fertile, as well as vital assets such as equipment, mills and irrigation points.⁶¹

Much as we share the views expressed above, we strongly believe that the Land Use Decree is a big step forward in an attempt to provide Nigeria with a dynamic national land policy.⁶² The emergence of this legislation is also of crucial significance to the execution of a big urban development project like the capital city of Nigeria. We may now go to the next section of this chapter to examine how the F.C.D.A. can cope with issues of compensation, resettlement and housing for the inhabitants of and immigrants into the F.C.T.

SECTION C

COMPENSATION, RESETTLEMENT AND HOUSING PROBLEMS IN THE DEVELOPMENT OF THE F.C.T.

Having been acquainted with some of the main provisions of the Land Use Decree we may now set out to explore the feasibility of its practical application as far as the planning and developing of Nigeria's new capital city is concerned. While in theory the LUD has now nationalised all lands in the country, it does not, in practice, mean that the Government can easily occupy any piece of land anywhere and at any time it requires land for development schemes.⁶³ We hope the previous section of this chapter has provided a fair picture of the position of the Government as regards undeveloped pieces of land in both urban and non-urban areas. We shall base our discussion, in this section, on those lands which are currently occupied by the

inhabitants of the F.C.T. and which the F.C.D.A. may wish to acquire for development purposes. Issues that necessarily come into focus here are things like: who determines what amount is to be given as compensation; when the compensation seems inadequate does the land owner have any right to appeal? Allied to this issue of compensation is the fate of the dispossessed in terms of new place of abode i.e. what is the mode of compensation to be given to the dispossessed? Is it in cash or in kind? Is the F.C.D.A. only concerned with cash payment or making sure that these people are resettled in a decent manner and given the opportunity to start a new life and look into future with hope and aspiration. We shall finally touch briefly on the subject of housing for the immigrants into the new capital territory and for the displaced inhabitants whose main priority now is where to settle once more to a meaningful life.

COMPENSATION

As far as the legal issues surrounding compensation within the F.C.T. are concerned there are two main statutes to base our discussion upon. First of all, S.6 of the F.C.T. Decree provides for payment of compensation in respect of land, buildings and crops within the territory. Section 6(2) in particular provides that in computing compensation payable under the Decree, the cost of land, construction or crops shall be such as may be determined by the authority (F.C.D.A.).

The Land Use Decree on the other hand, has made provisions for compensation to any person or community whose land is acquired in a different style from that of the F.C.T. Decree. According to the LUD,

all disputes on the amount of appropriate compensation payable are to be resolved by the Land Use Allocation Committee (LUAC). In lieu of financial compensation an alternative resettlement land may be provided in the case of a residential development, and any excess compensation (identified by the LUAC) is to be repaid as loan by the dispossessed owner. Section 33 (3) expressly provides that, where a person accepts to be provided with alternative resettlement land, his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such person. S. 47 (2) goes further to stipulate that no courts shall have jurisdiction to inquire into any question concerning the amount or adequacy of any compensation under the Decree, notwithstanding anything to the contrary in any law or constitution of the Federation or of a State.

In order to appreciate the effects of these two statutes in the planning and development of the F.C.T. we may take them one at a time. First let us examine the F.C.T. Decree.

COMPENSATION UNDER THE F.C.T. DECREE

The provision of S.6 (2) is not only grossly unfair but also extremely unilateral. First and foremost, in any issue of compensation there are two parties involved. There is always the acquiring authority on the one hand and the property owner on the other. This simply means that there are two conflicting interests. It is, in our view, the responsibility of the law-makers to ensure that the interests of both parties are preserved and protected. To provide that the cost of the land, buildings and crops in the F.C.T. shall be

such as may be determined by the F.C.D.A. presupposes that there is just one party involved. The poor dispossessed and helpless inhabitant of the F.C.T. is left to the whims and caprices of the F.C.D.A. officials. The law-makers ought to have taken into account the fact that these land owners in the F.C.T. are being forced out of their lands and homes and as such the terms and conditions for compensation should not only be reasonable and fair but most important should be bilateral.

The F.C.T. Decree has also not set out any criteria to be followed in computing compensation payable in respect of economic trees. All that S.6 (1) (c) says is that the amount payable in respect of 'crops' on acquired lands would be an amount equal to the fair market value of such crops. Using this as a basis for assessing the value of the several economic trees within the F.C.T. is using a vague criterion unilaterally to assess the value of legitimate property of the inhabitants of the F.C.T. This system of computing compensation, as this case study will soon show, benefits only the few F.C.D.A. officials who exploit the loophole of the F.C.T. Decree to their own advantage.

We may now consider the provisions of the Land Use Decree concerning assessment and payment of compensation.

COMPENSATION UNDER THE LAND USE DECREE

The first anomaly worth mentioning here is the provision of section 33 (3). This provision presupposes that the value of any resettlement land will automatically either be the exact value or of higher value than the land originally acquired. The law-makers here

could not envisage any situation where the value of the resettlement land may be less than the acquired land. This is clearly shown in the manner the provision stated that where the resettlement land is of higher value, the dispossessed person is liable for "loan repayment" on the difference. The law remains silent on cases where the acquired land is much higher in value than the one provided as resettlement land. One would have expected the law here to make adequate provisions to take care of any possible reimbursement to the dispossessed in a situation where there is a clear case of under-compensation.

However, the reader may, in retrospect, not be entirely surprised that the law here has openly chosen to ignore some of the rights and interests of the dispossessed land owner. This is because, it may be recalled that the provisions of S.6 of the F.C.T. Decree confers on the F.C.D.A. the power to single handedly assess and pay any amounts it deems just and adequate. Since the enabling statute creating both the F.C.D.A and the F.C.T. has categorically permitted the F.C.D.A to determine what is the value of land, building and crops within the territory, then it may be safe to assume that in the eyes of the F.C.D.A. officials 'no resettlement land can ever be less than the acquired one in value'.

The only explanation for such an open injustice through the use of a very negative piece of legislation is that which we attempted to highlight in Chapter One.⁶⁴ That is, the fact that, in most of the developing countries law fails to induce meaningful development due to the deliberate efforts being made by the elites (including legislators) of those countries to perpetuate their class interest and exploit the poor uninformed masses.

The tendency of the ruling class to use law as an instrument of

political, social and economic domination is not only apparent at the point of enacting laws but it also becomes obvious at the time of implementation. Let us illustrate this point with the provisions in the Nigeria's Land Use Decree which concerns the land use and allocation committee (S.2 (1)). Apart from the few appointees, listed under S. 2(3)(a) and (b) the responsibility for appointing members to this very important committee is vested in the Governors. Thus the Governors can, and do,⁶⁵ easily handpick people with clout in the ruling party or those who will be willing to 'dance to their tune'. The law has made no mention of any specific qualifications or requirements on the calibre of people that will serve on the Land Use Allocation Committee. Furthermore, the committee is vested with such powers that it gives one the impression that the handpicked members are there to do no more than protect the interests of the elite ruling class. What we find particularly disturbing is the fact that such a committee that is almost always made up of people with no professional skill or legal background of any kind has the final say in decisions affecting a scarce resource as important as land. S.47 (2) stipulates that no courts shall have jurisdiction to inquire into any question concerning the amount or adequacy of compensation once the issue has been decided by the Land Use Allocation Committee. We really cannot see the wisdom in making express provision in the Decree taking out of the jurisdiction of the law courts all matters decided by the LUAC. What the law-makers did in this case is equivalent to allowing a student to set questions, answer them and mark the answers himself. We are of the view that the law should have provided for an appeal on the decisions of the LUAC to lie to some judicial bodies in the country.

As far as the F.C.T. Decree is concerned, we think, it should have provided for an appellate body to listen to any person within the F.C.T. who considers compensation paid to him by the F.C.D.A. to be inadequate. This provision for an appellate body is particularly essential considering the fact that by virtue of S.6 (2) of the F.C.T. Decree the dispossessed has no say in how the compensation is computed and what amount is finally paid to him. Providing for an appellate body is nothing new in the history of land acquisition and compensation by public authorities in Nigeria. In order to support this claim, we may compare the one sided situation in the F.C.T. with S.5 (3) of Decree No. 33 of 1973 (the law establishing Sokoto-Rima Basin Development Authority).

According to that section:

Any person who suffers loss by reason of subsection 1 of this section or the provisions of the last foregoing subsection.... shall -

- (a) be paid adequate compensation by the authority in respect of the loss; and
- (b) be entitled to refer any question as to his interest in the subject matter of the loss and as to the amount of any compensation in pursuance of this sub-section for determination by the High Court having jurisdiction in the area in which the subject matter is situated.

The above legal provision clearly shows that the Sokoto-Rima Basin Development Authority cannot use its compulsory acquisition powers as an instrument of oppression. It is also an example of a statute that is both positive and just in outlook and also democratic in context and scope. Quite unlike the land owners in the F.C.T., the property owners in this area can appeal to a higher authority and have the opportunity of putting their case across and obtaining the

services of legal practitioners where necessary. There is no doubt that the authorities here will be more reasonable in assessing the amount payable as compensation knowing fully well that their decision is subject to the acceptance of the property owner or the final out-come of a litigation in a court of law.

Having highlighted some of the prominent provisions of the F.C.T. Decree and the Land Use Decree and their possible effect on the proprietary rights and interest of the inhabitants of the new capital territory we may now go on to examine what in practice has been the fate of these same people in terms of compensation, their resettlement and socio-economic prospects in areas other than their original birth place.

RESETTLEMENT. COMPENSATION AND DEVELOPMENT PROSPECTS WITHIN THE F.C.T.

Perhaps there cannot be a more sensitive aspect of urban development and management than the issue of compensation and resettlement of displaced people. The nature and scope of the resettlement policies formulated and implemented by planning authorities by and large determine the overall success or failure of urban development schemes. Resettlement policies are inherently complex due to the fact that they are meant to strike a delicate balance between two separate interests. For the displaced person, there is no doubt that the ideal situation is to be fully resettled in a manner that involves minimum disruption to their socio-economic status and cultural relations. On the other hand, the planning authority prefers a situation where the displaced population would be resettled as quickly as possible and at minimum costs in terms of

money, material and organisational effort. The attainment of a satisfactory resettlement strategy therefore depends largely on the compromise between, and reconciliation of, these conflicting interests.

One important thing worth mentioning at the outset of our discussion on this issue is the fact that resettlement strategies are greatly influenced by a number of factors. The dimension of the development scheme, the level of sophistication of the displaced persons and the location of the resettlement sites may all variously influence the scope of the resettlement policies. In other words, it is difficult to construct a grand theory or a general 'best' rule which will always provide solutions to the complex issue of resettlement. With this at the back of our mind, we may now briefly examine the compensation and resettlement policies of the F.C.D.A. in the new capital territory and its implications.

As far as the F.C.T. is concerned the Federal Government's resettlement policy has been subject to major fluctuations over the years. At first, all the inhabitants of the territory were scheduled to be resettled outside the territory. This was meant to facilitate easier development of the territory.⁶⁶ But after population enumeration was undertaken it was discovered that the cost of undertaking such a venture was much higher than the Government initially thought. In fear of the enormous expenses, the F.C.D.A. later decided that only those living within the area meant for the capital city would be compulsorily moved out and resettled elsewhere. This particular portion of land needed for the capital city and the area that will be required for city expansion within the foreseeable future is what is now known as the priority area of the F.C.T.⁶⁷ The non-priority areas are those areas in the F.C.T. not immediately

needed for city construction and expansion purposes. The population of this area is now being administered by the interim Development Area Administration discussed in Chapter Four.⁶⁸ Since plans for moving them out of the territory have been shelved, no immediate arrangements have been made for the compensation and resettlement of these villages within the non-priority area of the F.C.T. This simply means that only those displaced from the priority area require immediate compensation and resettlement. For this purpose, State Resettlement Committees have been set up for Niger, and Plateau States, the two States whose former land falls directly within the priority area. These committees are charged with the responsibility for looking after the different aspects of resettlement. The F.C.D.A. however retains the task of computing total compensation due to each State and presenting the amount to the State Government concerned.⁶⁹

Almost every inhabitant of the F.C.T. interviewed during fieldwork expressed a feeling of anxiety and dissatisfaction with the criteria being used by the F.C.D.A. to compute compensation rates in respect of buildings, economic trees and community structures within the territory.⁷⁰ The first approved F.C.D.A. rates were rejected by the various States resettlement committees on the ground that they were too low and unreasonable. A meeting of all the resettlement committees and F.C.D.A. representatives was then summoned to discuss acceptable rates. It was after this meeting that new rates were worked out and later approved by the F.C.D.A. Board.⁷¹ Table 3 below shows the detailed compensation rates currently being used in the F.C.T. to compensate the displaced inhabitants of the territory.

TABLE 3
COMPENSATION RATES USED IN THE FEDERAL CAPITAL
TERRITORY

<u>Items</u>	<u>Rates</u>
A. <u>BUILDINGS</u>	
	N K
Mud Hut with Thatch Roof	99.40 per hut
Mud Brick with Thatch Roof	112.50 " "
Mud Brick hut with Corrugated Iron Sheets	332.50 " "
Cement Plastered Mud Hut with Corrugated Iron Sheets	440.70 " "
Concrete built with Corrugated Iron Sheets	858.80 " "
B. <u>HOUSEHOLD AMENITIES</u>	
Wells	99.00 each
C. <u>GRANARIES</u>	
Mud-walled Granary	80.00 each
Grass-walled Granary	30.00 each
D. <u>COMMUNITY STRUCTURES*</u>	
	N K
Primary School	4,000.00 per classroom
Mosque	5,000.00 each
Churches	5,000.00 each
Courts	2,500.00 each
Dispensaries	2,000.00 each
Village Halls	3,000.00 each

E. ECONOMIC TREES

	N	K
Mango	50.00	per tree
Citrus	50.00	" "
Guava	12.00	" "
Cashew	12.00	" "
Acocadi Pear	60.00	" "
Pawpaw	12.00	" "
Coconut	18.00	" "
Oil Palm	18.00	" "
Locust Beam Tree	50.00	" "
Banana	15.00	" "
Sisal	13.00	" "
Castor Bean	12.00	" "
Kapok	15.00	" "
Coffee	18.00	" "
Cassia	5.00	" "
Cactus	1.00	" "
Atili	50.00	" "
Baoba (kuka)	18.00	" "
Bamboos (Gora)	5.00	per stand
Sheanut	16.00	per tree
Orange	50.00	" "
Pineapple	2.00	per stand
Dinya	10.00	per tree
Tsamiya	20.00	" "
Bagaruwa	10.00	" "
Lime	12.00	" "
Cocoa	10.00	" "
Kola	10.00	" "
Raffia Palm	4.50	" "
Plantain	15.00	per stand

F. FARMLAND

Cost of Labour used in preparing the land 650.00 per hectare.

SOURCE: Mabogunje (1979) p.22

* Although tentative rates were agreed on for Community Structures, it was decided that it would be better for the items to be evaluated individually for compensation.

Although the above Table shows a very comprehensive list of items and the various rates approved by the F.C.D.A. for compensation within the territory, we are of the view that the criteria used in arriving at these rates were unjust and undemocratic. In arriving at these rates neither the ordinary inhabitants of the F.C.T. nor any of their local representatives or leaders were summoned to express their views. Instead, only the States resettlement committees sat with the F.C.D.A. officials and worked out compensation rates to be used in the territory. We cannot see how the various states resettlement committees can be the true representative of the hundreds of thousands of the displaced people whose property is the subject of compensation. We are of the view that since there were some community structures involved, at least some of the community leaders within the affected areas ought to have been contacted. Their views and feelings on the whole compensation and resettlement exercise would have been of immense help to the F.C.D.A. Failure to do that has brought about a number of problems. Before enumerating these problems we may examine how the compensation is being paid in practice.

There seems to be no direct contact between the displaced people and the F.C.D.A. in the new capital territory. What happens in practice is for the officials of the States resettlement committees to enumerate and assess all items in the areas falling within their jurisdiction and forward the claims of such people to the F.C.D.A. in accordance with the approved rates. The compensation is then paid in cash to the beneficiaries through these States resettlement committees. When the F.C.D.A. receives a list of claims it makes direct payment to the resettlement committee concerned and the responsibility for paying the displaced people is left with the resettlement committee.

The above arrangement, in our view, suffers from many defects. First of all, a vast number of the displaced people are illiterate and are being cheated by the resettlement committee officials. The officials pay less compensation than they actually collect from the F.C.D.A. Also this arrangement provides a loophole where the officials of the resettlement committee now conspire with some of the displaced people to inflate the number of economic trees, farmland or community structures in a given village. In 1978, for instance, a case of fraud was uncovered in the priority area of Niger State. The villagers in this case, were reported to have refused moving out of their village because they were underpaid by the resettlement committee.⁷² This clearly shows the need on the part of the F.C.D.A. to monitor payment exercise by these States Committees. The F.C.D.A. can only do that by providing a mechanism for checking and ensuring that the funds made available to these committees are not diverted to private hands. This can be done if the F.C.D.A. insists that its officials should be present when compensation money is being paid to the displaced people by their respective State Resettlement Committees.

Apart from the cash payment being made as compensation in respect of economic trees, farmland and other individual items within the territory, the F.C.D.A. is currently engaged in the process of resettling the villagers whose area fall directly within the priority area. Here again the various States Resettlement Committees are directly responsible for providing all the community structures and essential infrastructures in the new areas meant for resettlement. The displaced people then use the cash compensation they receive to build their own houses and to start new farms and settle down to a new

life. It appears, from the way things are being handled by the F.C.D.A., that too much emphasis is being placed on cash payment as the mode of compensation for resettlement. We are of the view that cash payment should be discouraged as far as possible in cases of resettlement. Payment of cash should be restricted to only items like economic trees and farmland. The law here ought to have made specific provisions empowering the F.C.D.A. to embark on a full scale resettlement exercise by providing the displaced people with new houses in a new site with all the necessary facilities or by laying out building plots supplying building materials and encouraging the displaced people to build their own houses. This, we believe, would have been much better than providing the displaced with money as compensation for their houses and other items through the States Resettlement Committees and expecting them to resettle themselves. There is no guarantee that all those who receive large sums of money as compensation will go to the new site and build a similar structure to the one they left in the F.C.T. one cannot rule out the possibility of many displaced people using the cash compensation to trade or even to marry more wives.

Although resettlers in any development scheme will naturally show concern on how adequately they are compensated for their material loss, there are more important considerations than the amount of money they receive. First and foremost, resettlers are always apprehensive of how much they will be able to retain of their traditional past and ties in the process of resettlement. The fear of losing their cultural identity and the uncertainty as to what the future holds for them by far outweigh any financial consideration on their minds. Resettlement is therefore such a crucial and sensitive issue that if not handled properly it can mar the entire development scheme.

Once more, the F.C.T. Decree has in this case failed to provide a proper legal framework within which the resettlement exercise is to be conducted. Instead of facilitating development, the law here seems to be only capable of creating tension. If for instance, S.6 of the F.C.T. Decree had recognised the rights and interests of the resettlers and provided them with a chance to have a say on the adequacy or otherwise of all compensations paid to them this would have had a significant effect on the response and cooperation of the local population and their leaders. But as things stand now, the provisions of S.6 (2) (c) in particular will remain a source of worry to the villagers since it makes them totally ignorant of how their own property would be assessed and how much compensation they are entitled to.

We may compare this situation with the provision of S. 2 (c) of Decree No. 32 of 1973 (The Law establishing Chad Basin Development Authority in Nigeria). Section 2 of this legislation deals with the principal functions of the authority and subsection (c) states:

The principal functions of the authority shall be-

- (c) the resettlement of persons affected by the works specified in paragraph (b) above or under special resettlement scheme;

The mere fact that the Authority's principal functions here include the resettlement of the local population is a morale booster to the people. This provision, apart from easing tension, is a very good method of assuring the local population that the Government has their welfare at heart. In fact, this goes to confirm that their welfare is not only recognised but also legally guaranteed.

Another issue that is directly connected with, and relevant to, the question of resettlement is the issue of housing in and around the new capital city. No discussion on urban development can be complete without touching on the housing needs of the urban population. The need on the part of the resettled local population of, and the new immigrants into, the F.C.T. to have good shelter and access to finance for building their own accommodation cannot be over emphasised. We may briefly examine the prospects of these urban settlers in the F.C.T. in terms of housing and housing finance.

HOUSING IN THE F.C.T.

Housing is more than merely the dwelling unit. It is a complex product made up a combination of attributes: indoor living space, land, utilities, locational situation (with respect to work and services), outdoor living space and relationships with family friends and neighbours. As such, housing is a basic need and represents the closest point of contact between the city residents and the new city.⁷³

These were the words of Stephen Lockwood in a seminar paper. Incidentally, the title of this particular paper was "Planning the new capital of Nigeria". The above statement provides a clear insight into the whole concept of housing not only in Nigeria's new capital but also in any city. It goes to establish one basic fact. That is the fact that no matter the beauty of a city and no matter its quality of administration, that city will remain a failure if it does not satisfy the basic housing needs of the ordinary city residents. He (Lockwood) goes further, in another statement, to reveal the true position of things in most newly planned cities when he writes:

Provision of satisfactory housing in sufficient quantities at an affordable price is a test which few newly planned cities have met. The poor, who are the majority residents of such cities have either been relegated as an after-thought into remote satellite towns not deemed worthy of the planners' attention, or conversely jammed into limited varieties of expensive high standard units not likely to meet their individual life-style or economic needs.⁷⁴

A housing programme for Abuja cannot be executed outside the national housing policy for Nigeria. The existing housing situation in Nigeria is very chaotic. The urban poor, for instance, cannot have adequate shelter without getting into one form of hardship or the other. It is very difficult, if not impossible, for the manual workers and poor people to save enough money for a house of their own. The majority of the urban households crowd into rented one-room quarters without essential services while the so-called rich citizens and top civil servants are served by an inefficient and import-dependent building industry.⁷⁵ This is because all along the various housing programmes embarked upon by the Federal and State Governments in Nigeria reflect failure to identify the goals of a housing programme. In our view, the crucial point which must be reflected in any housing policy is the obvious fact that, housing is for people, and it is adequate housing only when and if it meets the needs and suits the paying ability of the population for whom it is being made. But unfortunately it is this very point that is being ignored by the policy makers in Nigeria, and indeed in several other Third World countries.⁷⁶ Take for instance, the so-called "Low Cost Housing Scheme" by the various State governments in Nigeria. This scheme has never had any significant impact on the lives of the low-income group.^{76A} Most of such houses fall into the hands of middle class families. This is mostly because the standard of building puts rents far above what

low level workers and poor citizens can afford. We may at this juncture ask: what are the hopes of the urban poor in and around the F.C.T. with this rather confused housing situation in Nigeria?

Since, from our discussion above, the ordinary urban poor cannot rely on the government sponsored housing scheme in Nigeria, their only and last hope will be their access to finance in order to build their own shelter. We may now explore the ease or difficulty with which the average urban poor within the F.C.T. can have access to housing finance. We may begin by looking at this observation:

Too often financial institutions established to assist home-ownership or industrial development in Third World countries are those of the West from which they have often derived their inspiration, law and administration. But building societies however useful a mode of extending home-ownership in the U.K. are of limited use in a society where barely 10% of the population can afford the kind of house a society is willing to lend money on; indeed such an institution is positively harmful for it channels the small savings of the majority towards housing provision for the minority.⁷⁷

The above quotation shows, once more, that the urban poor are in a disadvantageous situation when it comes to obtaining adequate shelter through housing finance institutions. The ordinary urban settler in the F.C.T. for instance, can only be eligible for housing loan if he meets one or more of the following conditions: assurance of economic stability and reliability as may be indicated by steady employment or regular savings and/or the provision of adequate collateral.⁷⁸ As far as the local population of the F.C.T. are concerned, only a small number of the population can actually be eligible in terms of the criteria for adequate level of income. As for the 'regular dependable employment' requirement it is doubtful if more than 5% of the local population can qualify. This is mostly because, in the F.C.T. as in

many urban centres in Nigeria, while many low- and moderate-income households are unemployed or underemployed for substantial periods of time, many others are intermittently economically active as opportunities arise during different seasonal periods. In terms of the requirement for collateral, most of the F.C.T. inhabitants may have no capital or proof of ownership of tangible assets.

Apart from the inability of the urban poor to meet the restrictive criteria and terms for granting housing loans, the majority of the urban population are completely ignorant of the existence of such financial institutions. The Federal Mortgage Bank in Nigeria is an excellent example. This is a financial institution, that is meant to serve the entire nation by providing loans particularly to the needy ones to build their own houses. Unfortunately these Banks are far removed from the greater majority of Nigerians. Take for example, Section 12 of Decree No. 7 of 1977 (the law establishing the Federal Mortgage Bank of Nigeria). It provides:

The Mortgage Bank shall have its Head Office in Lagos and may, subject to the approval of the Commissioner, open branches in other parts of Nigeria and appoint agents and correspondents in accordance with the decision of the Board.

From the above legal provision one would have thought that the Federal Commissioner for Finance, in accordance with this relevant section, would easily approve the establishment of the Bank in many parts of the country. Unfortunately, the Federal Mortgage Bank has branches in only few State capitals. Thus, the greater number of Nigeria's population living in other urban areas and rural settlements do not even know of its existence.

Even in places where such financial institutions are established one finds that the application forms and other documents to be filled

before getting loans are so technical and unnecessarily difficult to comprehend by the few eligible people. Thus instead of facilitating access to finance such complicated and technically fashioned application forms serve as a disincentive to the prospective borrower. Thus he becomes frustrated. We may now examine the urban settler's next resort after failing to get access to housing finance.

As we have indicated in the previous two sections of this chapter, the urban poor are always the victims of circumstances. Firstly, they can hardly own a single plot of land within the city due to the exorbitant cost of land. Where they manage to get one, they cannot get the building permission in good time due to the restrictive system of reviewing applications and the corrupt tendencies of public officials. If they struggle hard and get a building permit, the building standards and regulations are beyond their comprehension and affordability. Also as earlier mentioned, their lack of stable source of income and tangible assets (collateral) disqualifies them for a loan from housing finance institutions. So, the urban poor have, as their last resort, the simple one-bedroom which they can rent in the town. Even here the urban poor have another major hurdle to leap over. Three to six months rent is demanded in advance by the affluent landlords who do not care in any way about the financial and social predicament of these poor urban settlers. If they cannot afford the rent they are left with no alternative but to find anywhere they can lay their heads. In most cases such people go outside the city to find a place where they can build houses in accordance with their means. More and more immigrants join them and gradually a shanty town is formed.

Our discussions above represent a summary of the practical problems facing the urban poor in Nigeria generally and indeed in many other African countries. There is nothing to suggest that it will be different in Abuja. In fact, from all the issues raised in this and the previous chapter, the urban poor in Abuja are likely to suffer the same fate as the urban poor described above. The next question is: in the event of such a community of landless and poor immigrants and inhabitants of the F.C.T. emerging somewhere far away from the capital city should the F.C.D.A. regard them as illegal squatters and bulldoze their "illegal" structures or should the authority appreciate their plight and provide them with security of tenure?

Looking at the circumstances the urban poor have found themselves in, demolition of all the structures they have toiled so hard to put up will not only be unrealistic but also inhuman. In dealing with such cases of slum settlements and slum dwellers within the F.C.T. we would support the approach suggested by George Franklin when commenting on the relationship between the so called squatters and planning authorities.

He wrote:

They should no longer be considered and treated as criminals and outcasts but recognised for what they are: potential contributors to the economic life and social wellbeing of the city. The practical solution in most cases is to give them the legal right to use the land they occupy, to permit the use of semi-permanent forms for constructions and standards determined by the materials they are able to acquire and their own ability, to plan the area so that there is as little physical disturbance as possible and in cooperation with the former squatters initiate a phased programme of improvements including the provision of basic services, in order to enable the area and its people to be incorporated into and become an accepted part of the community.⁷⁹

We share all the points of view expressed in the above statement. It does reveal a very good strategy for solving all the problems of squatter settlements. Like all capital cities, Abuja is bound to face these problems. The F.C.D.A. should first of all provide the squatters with security of tenure. This is a very important step towards providing a permanent solution to the whole problem. It is however important to note here that some authorities may be reluctant to do so. They may argue that providing squatters with automatic security of tenure is capable of laying a very dangerous precedent in the sense that the authority is wilfully condoning an act which is *prima facie* illegal i.e. the illegal occupation of the land. Much as one would appreciate this line of argument there is apparently no alternative way of sorting out the initial and basic issue of security of tenure other than granting such a security. Apart from solving the problem of identifying the actual demarcation of land, this good gesture by the authorities concerned will encourage the people to invest fully in their land. Thus, they will gradually be incorporated as part and parcel of the society.

The last few paragraphs conclude our case study of the legal and administrative framework of the F.C.D.A. of Nigeria. We hope that the issues raised in chapter four and the issues that relate to practical urban legal problems now discussed in this chapter, will stimulate further thoughts and discussions on the role of law and administration in urban development. We shall, in the next chapter, undertake a separate case study of a different urban development corporation that has the same aims and objectives as the F.C.D.A. We may now proceed to Chapter Six.

CHAPTER FIVE - NOTES AND REFERENCES

1. See Section D of Chapter one - particularly footnote Nos. 98 and 99
2. This legislation was referred to as the Nigerian Town and Country Planning ordinance No. 4 of 1946.
3. See Joseph Uyanga, Towards a Nigerian National Urban Policy, Ibadan, The caxton Press (West Africa) Limited, 1982, p.37.
See also C.C. Ola, Town and Country Planning Law in Nigeria, Oxford, London, Ibadan, Oxford University Press, 1977, p.25.
4. See Harry A. Green, "Urban Planning in Nigeria", Vol. XVIII, Nos. 1-4 Journal of Administration Overseas 1979, p.27.
See also Gihring, T.A., "From Elitism to Accountability - Vol. X, No. 4, Quarterly Journal of Administration, July 1976, University of Ife.
5. Patrick McAuslan, "The urban land question", a paper presented at a HABITAT INTERNATIONAL COUNCIL CONFERENCE, LONDON, 1982,p.5.
6. See Fig. 2 showing the F.C.T. and the three states from where it was carved.

7. See S. 1 (1) of Kano State Urban Development Board Edict No. 5 of 1976, Kano State, Nigeria Gazette No. 8, Vol. 10, 27th May 1976 supplement part A.
8. See F.C.T. Decree op. cit. S.4(1) (b).
9. Malcolm Grant, Urban Planning Law, London, Sweet and Maxwell, 1982, pp.87-98.
10. See Albert Waterston, Development Planning - Lessons of Experience, Baltimore and London, The Johns Hopkins University Press, 1982, pp.11-13.
11. Naomi Caiden and Aaron Wildavsky, Planning and Budgeting in Poor Countries, New York, John Wiley, 1974, Chapters 9 and 10.
12. See Malcolm Grant op. cit. p.132.
13. For more detailed discussion on the procedure for the preparation and adoption of a plan see ibid pp.121-130.
14. See Section 2(1) F.C.T. Decree op.cit.
15. Ibid. Section 4 (1) (b).
16. See The Master-Plan for Abuja, F.C.D.A., Nigeria, p.6.
17. Ibid, p.96.

18. See The Nigerian Observer, a daily newspaper, 15th April 1983.
19. The commencement date of the Decree was 4th February 1976.
20. See Section 7 (2) of the F.C.T. Decree.
21. Although this is not documented, our private academic discussions with researchers in this area from many Third World countries confirm that this negative attitude is not peculiar to Nigeria.
22. McAuslan, Patrick, Consultancy Report to the Managing Director, Kano State Urban Development Board, Kano, Nigeria, December, 1978, p.113.
23. Gans, Herbert, J., "Planning for People, not Buildings" Vol. 1, (1969) Environment and Planning, pp.33-46.
24. See G.I. Nwaka, Owerri: Development of a Nigerian State Capital", Vol. 2, No. 2, Third World Planning Review, 1980, p.240.
25. See T. O. Elias, Nigerian Land Law, London, Sweet and Maxwell, 1971, p.9, see also:
R.W. James, Modern Land Law of Nigeria, Ife, University of Ife Press, 1973, p.15.
26. This was a legislation of the Gold Coast Colony - Lagos was then part of the Gold Coast Colony in the early years of colonial period in this part of Africa.

27. Cap. 167 Laws of the Federation of Nigeria, Lagos, 1958.
28. See for example, cap. 105 Laws of Western Region of Nigeria (Public Lands Acquisition Law, 1959).
29. See Town and Country Planning Law, cap. 123 of the laws of Western Nigeria, 1959. Also see the Lagos Town Planning Act, No. 45 of 19.
30. See cap. 24 Laws of Western Nigeria, 1959.
31. For more details on this subject see Park, "A dual system of Land tenure: the experience of Sourthern Nigeria", [1965] J.A.L. P.1.
32. See Cap. 59, Laws of Northern Nigeria, 1963.
33. The basic principles of land tenure in Northern Nigeria were contained in sections 4, 5 and 6 of the law. See C.M. McDowell "The Interpretation of the Land Tenure Law of Northern Nigeria", Vol. 14, No. 3, J.A.L. 1970, p.159.
34. "Native" was defined in Section 2 of the Land Tenure Law as: "a person whose father was member of any tribe indigeneous to Northern Nigeria", and "non-native" was defined as: "any person other than a native as above defined".
35. C.M. McDowell op.cit., p.168.
36. Ibid.

37. See Section 39 (3) of the Northern Nigerian Land Tenure Law, 1962.
38. Now termed Local Government Authority (LGA) see for example, Native Authority Law (Amendment) Edict No. 14 of 1968, Kano State of Nigeria S.2.
39. See Section 28 (1) (a), (b) and (c).
40. Ibid, Section 35.
41. See The Third National Development Plan, 1975-1981, Federal Republic of Nigeria, p.293.
42. See A. L. Mabogunje, J. E. Hardoy and R. P. Misra, Shelter Provision in Developing Countries, Chichester, New York, Toronto, John Wiley and Sons 1978, p.39.
43. Ibid.
44. See Federal Republic of Nigeria, official Gazette No. 14, Vol. 64, Lagos, 29th March 1978, Decree No. 6 - Land Use Decree 1978.
45. The basic principle behind the Land Tenure Law in the former Northern Region and the arguments of the Land Use Panel on which the 1978 Land Use Decree is based are remarkably similar i.e. that, "the land is the ultimate source of all wealth, and its ultimate ownership should be vested in the State in order to

secure for all the economic rent and the unearned increment arising from the increased value caused by development, whether due to expenditure by the state or by the community"

See Lord Lugard, Political Memoranda, London, Frank Cass, 1970, p.340.

46. This is similar to the recommendations of the Northern Nigerian Lands Committee which formed the basis for introducing the colonial Land and Native Rights Ordinance of 1910 which ruled that 'the whole of the land, whether occupied or unoccupied, is subject to the control of the government, and that no title to occupation, use or enjoyment of any land is valid without the consent of the government'. See Lord Lugard, The Dual Mandate in British Tropical Africa, (5th ed.), London, Frank Cass, 1965 pp.288-289.
47. Mabogunje, A.L., Hardoy, J.E. and Misra, R.P., Shelter Provision in Developing Countries, SCDPELL, John Wiley, New York, Chichester, 1978, p.39.
48. See Lord Lugard, Political Memoranda, op.cit. p.362.
49. The author interviewed a number of people within the F.C.T. including the heads of the following villages, 1. Nyaya 2. Kuje and 3. Yaba. The interviews were conducted between February 4th to 16th March, 1983.
50. See First Report on the establishment of a unified system of Administration for the F.C.T., Institute of Administration, A.B.U. Zaria, op.cit. p.81.

51. Ibid. p.82.

52. See The New Nigerian, April 23rd, 1982 p.9. A traditional chief from Southern Nigeria was quoted as saying that the Land Use Decree should be abrogated because it has taken away part of the traditional heritage of family heads and local chiefs - Land allocation and settling land disputes. See also G.C. Akoro, Housing, Land Use and Environmental Protection in Nigeria, Unpublished LL.M Dissertation, University of Warwick, 1982, p.39.

53. See J. A. Omotola, Essays on the Land Use Decree, Lagos, Lagos University Press, 1980, p.6.

54. Ibid., p. 7, see also Sections 5, 6, 34 and 36 of the Land Use Decree.

55. See J. A. Omotola, "The Land Use Decree 1978 and customary system of Tenure", [1982] Nigerian Current Law Review, p.57.

56. Ibid., p.58.

56A. The author interviewed the village Head of Abaji, the Secretary Abaji Development Area and one Mallam Haruua Isa on the 20th March, 1983.

57. See the case of Onishiwo v Bamgboye (1941), WACA, p.69.

58. See the Nigerian case of Abudu and Anoterh V Oladip Tubi (1974) 12 S.C. 71.

59. See Section 34 (5) and (6) of the Land Use Decree.

60. See Ifebueme Okpala, "The Land Use Decree of 1978: If the Past should be Prologue" Vol. XVIII Nos. 1-4, Journal of Administration Overseas 1979, pp.15-21.

61. See Peter Peek and Guy Standing, "Rural-Urban Migration and Government Policies in Low-income countries", Vol. 118, No. 6, International Labour Review, 1979, p.752.
62. Despite doubts about its wisdom and scepticism about its effectiveness, we believe that the Land Use Decree has the potential necessary for solving some of the problems connected with acquiring land for planned development. For more discussion on the prospects of the Land Use Decree see Nwaka, G. I. "The Nigerian Land Use Decree: Antecedents and Prospects" Vol. 1, No. 2, Third World Planning Review, 1979, pp. 193-204.
63. Okpala, D.C.I., 'Accessibility Distribution aspects of Public Urban land Management: A Nigerian Case', Vol. 4, No. 1, HABITAT, 1978, quoted in Okpala 1, "The Land Use Decree of 1978: If the past should be prologue", Vol. XVIII, Nos. 1-4, Journal of Administration Overseas op.cit., p.21.
64. See Footnote No. 89 of Chapter One.
65. During the last civilian regime in Nigeria, most of the members of the land use Allocation Committee in various states were registered members of the political party in power in those states.
66. See First report on the Establishment of a unified system of Administration for the F.C.T., Department of Research and Consultancy, A.B.U. Zaria, Nigeria, P.115.
67. This area is about 380 sq kilometres.

68. See Footnote No. 43 of Chapter Four.
69. See 3rd Annual Report and Accounts, F.C.D.A. 1978/79 op.cit. p.4.
70. The following people were interviewed by the author:-
(i) M. Audu Dogo of Kuje Village on 26th February, 1983,
(ii) Tanimu Yahaya of Yaba village on the 3rd March 1983 and Isa Garba of Nyaya village on the 14th March, 1983. Most of these interviews were conducted in native languages and later translated into English by the author.
71. See A. L. Mabogunje, "Report of the Ecological Survey of the F.C.T.", Vol. II, Population, Settlement and Resettlement in the F.C.T." 1979, F.C.D.A. Nigeria P.20.
72. See Daily Times, August 28 1978. Another case of fraud by these States Resettlement Committees was also reported in the Daily Times of 26th April, 1983.
73. See S. C. Lockwood, "Planning the new capital of Nigerial", a seminar paper, (P.T.R.C. Summer Annual Meeting), University of Warwick, July 1977, p.31.
74. Ibid.
75. See National Housing Policy, Lagos, Federal Government Printing Press, 1979, p.3.

68. See Footnote No. 43 of Chapter Four.
69. See 3rd Annual Report and Accounts, F.C.D.A. 1978/79 op.cit. p.4.
70. The following people were interviewed by the author:-
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71. See A. L. Mabogunje, "Report of the Ecological Survey of the F.C.T.", Vol. II, Population, Settlement and Resettlement in the F.C.T." 1979, F.C.D.A. Nigeria P.20.
72. See Daily Times, August 28 1978. Another case of fraud by these States Resettlement Committees was also reported in the Daily Times of 26th April, 1983.
73. See S. C. Lockwood, "Planning the new capital of Nigerial", a seminar paper, (P.T.R.C. Summer Annual Meeting), University of Warwick, July 1977, p.31.
74. Ibid.
75. See National Housing Policy, Lagos, Federal Government Printing Press, 1979, p.3.

76. See John Turner, "Approaches to Government-sponsored housing", Vol. 41, No. 242, *Ekistics*, 1976, p.4.
- 76A. See National Housing Policy, Lagos, Federal Government Printing Press, 1979 op.cit. p.1.
77. McAuslan Patrick, "The Urban Land Question" op. cit. p.14.
78. These criteria for housing loans in most Third World Countries have been fully discussed in a U.N. Report - "Non-conventional Financing for Low-income Households", U.N. Publication, Sales No. E.78.IV.12 (ST/ESA/83) p.10.
79. See Franklin G., "Migration, Urbanization and National Development", Vol. XII, No. 3, *Journal of Administration Overseas*, 1973, p.177.

CHAPTER SIX

CAPITAL DEVELOPMENT AUTHORITY DODOMA, TANZANIA:
DEVELOPMENTAL PROBLEMS AND PROSPECTS FROM A LEGAL PERSPECTIVE

Like the two preceding chapters, this chapter sets out to undertake a case study, albeit relatively shorter, of another urban development corporation currently engaged in the planning and development of a new capital city in Africa. This time our focus shifts to the eastern part of the African continent. The development corporation under review is the Capital Development Authority, Dodoma in Tanzania (hereinafter referred to as the C.D.A.).

This chapter is divided into three sections. Section A discusses the background history of Dar es Salaam (Tanzania's former capital city) and the circumstances that led to a decision by the Tanzanians to opt for a new capital city. Section B goes to examine the urban development corporation shouldering the responsibility of implementing this decision by way of planning development and the management of the new capital city. This second section will be more emphatic in identifying the powers and functions of the C.D.A. with a view to establishing the presence or absence of the necessary legal, administrative and planning framework within which the C.D.A. is to operate. This will be by way of highlighting and analysing some of the main provisions of the C.D.A. Establishment Order of 1973. Section C then ends the chapter by examining some of the more practical and crucial problems that the C.D.A. faces in the area of planning and development. Prominent among such problems are, land acquisition, finance, housing and development control. Let us now go to Section A.

SECTION A

HISTORICAL BACKGROUND

Tanzania is one of the African countries that have witnessed quite a number of changes politically and socially since Independence. This particular area which is today known as Tanzania lies in the Eastern part of the African continent and comprises what was formerly known as Tanganyika and the Islands of Pemba and Zanzibar.¹ It was renamed Tanzania in 1964 as a union formed between the Republic of Tanganyika and Zanzibar.² Prior to this union, the two countries were completely independent of each other. Their experiences in terms of colonial administration were also quite different. Zanzibar was, before the union, smaller in size and population. With the union the two countries became one sovereign state with the name Tanzania³.

Dar es Salaam has been the capital city of Tanzania since 1891 when the capital was moved from Bagamoyo by the Germans.⁴ Germany's influence in East Africa dates as far back as 1884. This was a period known in history as "the period of the scramble for Africa". There was what can be termed as 'the appropriation of tropical Africa by the European colonisers between 1884 and 1891.⁵ The Eastern part of Africa was partitioned by the colonisers and Germany and Britain each got their spheres of influence. It was then that Germany was granted, by the Delimitation Commission of 1886, that area comprising Tanganyika Ruanda and Burundi. When German rule was fully established (though not without serious local resistance)⁶ Dar es Salaam was made the capital city. The German Imperial Power saw Dar es Salaam as a natural harbour and believed that there could not have been a

better place that would be able to take their regular steamship across the ocean than Dar es Salaam. So the selection of Dar es Salaam then was mainly to serve the imperial and maritime purposes of the Germans.⁷ By the Versailles Peace Treaty of 1919 however, Germany renounced all rights over her colonial possessions in favour of the Allies.⁸ The Allies jointly agreed that Great Britain should take over the administration of East Africa, with the exception of Ruanda and Burundi both which came under Belgium's control. Thus Tanganyika had changed to a new colonial master - Britain.⁹ But even after the takeover of the Tanganyika colony by the British (see The League of Nations Mandate of 1918) Dar es Salaam was retained as the capital city. This is not surprising because the takeover did not change the dependent status of the territory. The new colonial overlords (Britain) had the same political and economic aims and objectives as the old ones (Germany) as far as colonization is concerned. This being the case, Britain was only too pleased to enjoy the advantages a natural harbour like Dar es Salaam could provide as the capital and seat of government of Tanganyika. Thus Dar es Salaam remained the capital city of Tanganyika up to the year 1961 when the country attained political independence.

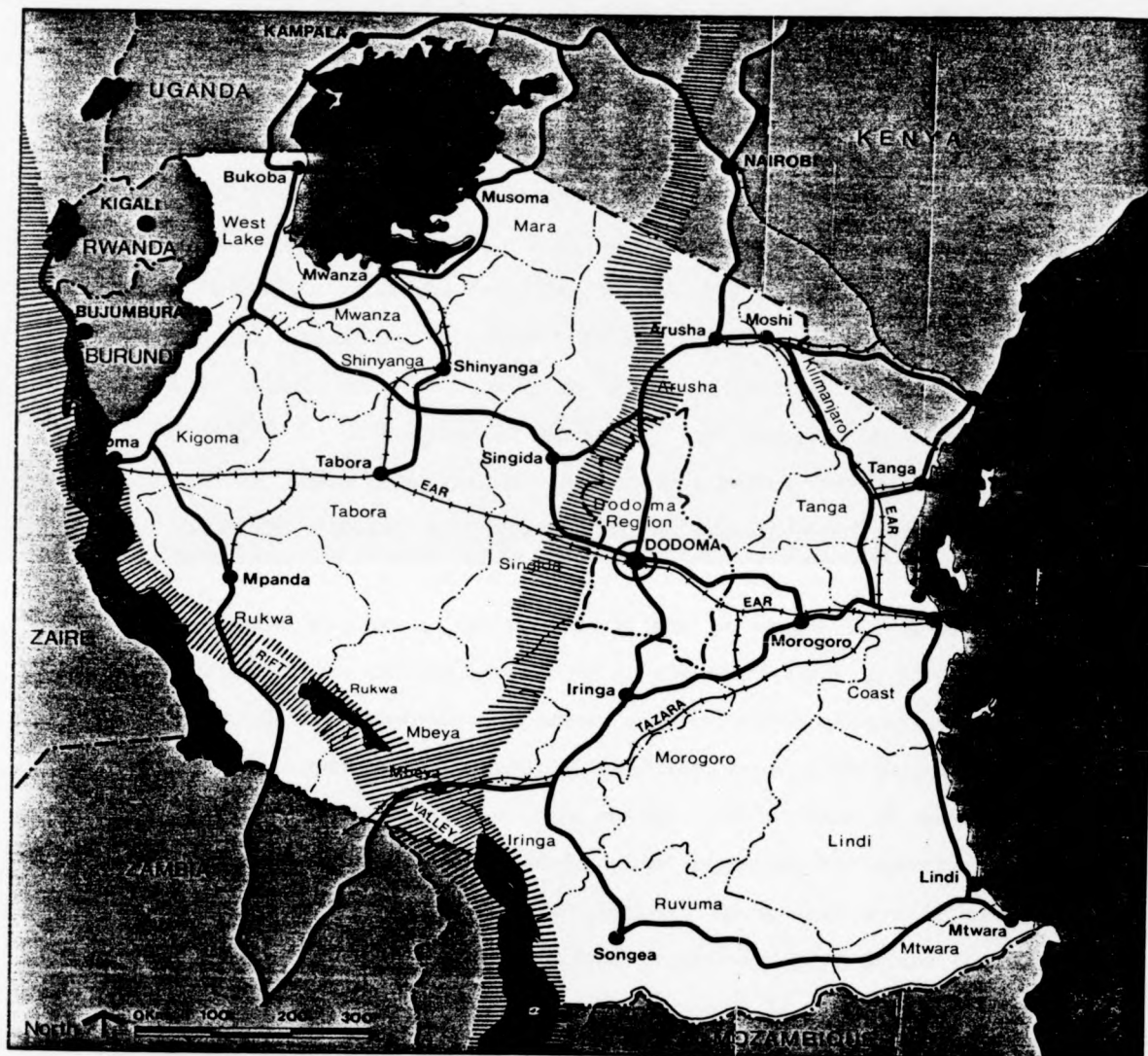
Soon after Independence in 1961, imperial interests gave way to national considerations in Tanganyika. The unsuitability of Dar es Salaam's role as a capital city was increasingly becoming obvious. Many parliamentarians and militant citizens alerted the nation on the desirability of an alternative site. This soon became a national issue and received the widest publicity and response from all over the country. The Parliament debated this and alternative sites were considered. Among the areas recommended were Tabora, Arusha, Mbeya, Dodoma and Iringa. The whole country had now realised the need for a

new capital but there was little or nothing that could be done because of the large sum of money required for undertaking such a big project. Much as the country and the people wanted a new capital city, the people knew that they could not afford one. This issue once started, however, kept re-surfacing from time to time. The issue became more pressing in 1972 when the Mwanza Regional Executive Committee of the Tanganyika African National Union (hereinafter referred to as TANU) initiated a move to resolve the issue once and for all. It was then that a nationwide TANU referendum was conducted. This national referendum revealed an overwhelming support for the removal of the capital from Dar es Salaam to Dodoma. As a result of this, Dodoma was officially declared the new capital of Tanzania on October 5, 1973¹⁰. Thus Dodoma was finally selected among other competing towns as earlier enumerated. This raises the question: why Dodoma? In other words, why was Dodoma the favourite of the people among all the other towns? But first of all let us find out where exactly Dodoma is geographically.

Dodoma is located in the central region of Tanzania. This area lies on a gently undulating plateau, at an altitude ranging from 2,000 to 4,500 feet. The town of Dodoma itself is about 3,650 feet above sea level with a semi-arid climate, mostly warm during the day and relatively cooler at night. This region has an adequate rainfall mostly falling in a brief rapid spell between December and March.¹¹

As for the question 'why Dodoma' instead of places like Tabora, Arusha or Iringa, we may now seek to join other people in and outside Tanzania who are curious to know the reasons behind the decision to choose Dodoma. Like most newly created capitals, Dodoma enjoys the advantage of being in a relatively geographically central location in Tanzania. It was in fact, noted that:

FIGURE 7 : DODOMA IN NATIONAL SETTING



Dodoma, National Setting

SOURCES : National Capital Master Plan, Dodoma, Tanzania

When Dodoma became capital of Tanzania in 1973 it was just one of a number of medium-sized 'upcountry' towns. It was distinguished from other settlements like Tabora, Arusha, Iringa and Mbeya by the fact that it lies almost in the centre of Tanzania; and it was this central position that in the end led to its being chosen as the capital.¹²

In order to appreciate the rationale on the part of the government and people of Tanzania in choosing an area that is relatively more central than Dar es Salaam one needs to be acquainted with the socio-economic development of Tanzania as a nation. The country is poor and underdeveloped and the retention of the old peripheral capital city will not facilitate development in the rural hinterland of Tanzania. Also, since the government in Tanzania is one that is totally committed to principles of socialism and ensuring development at grassroot level there couldn't have been a better choice than a place located in a rural environment such as Dodoma.¹³ There can be no doubt that the peripheral position of a capital city makes the government extremely isolated from the governed and as such the majority of the population living in the hinterland do not feel the impact of the government in terms of development projects. On the contrary, a centrally located capital city, apart from performing its political and administrative role as the official seat of government, serves as the social and economic nerve centre of the country. It is therefore much easier for development to spread evenly to all directions from the centre than from an isolated part of the country. Commenting on this particular trend of events in Tanzania, President Nyerere had this to say:

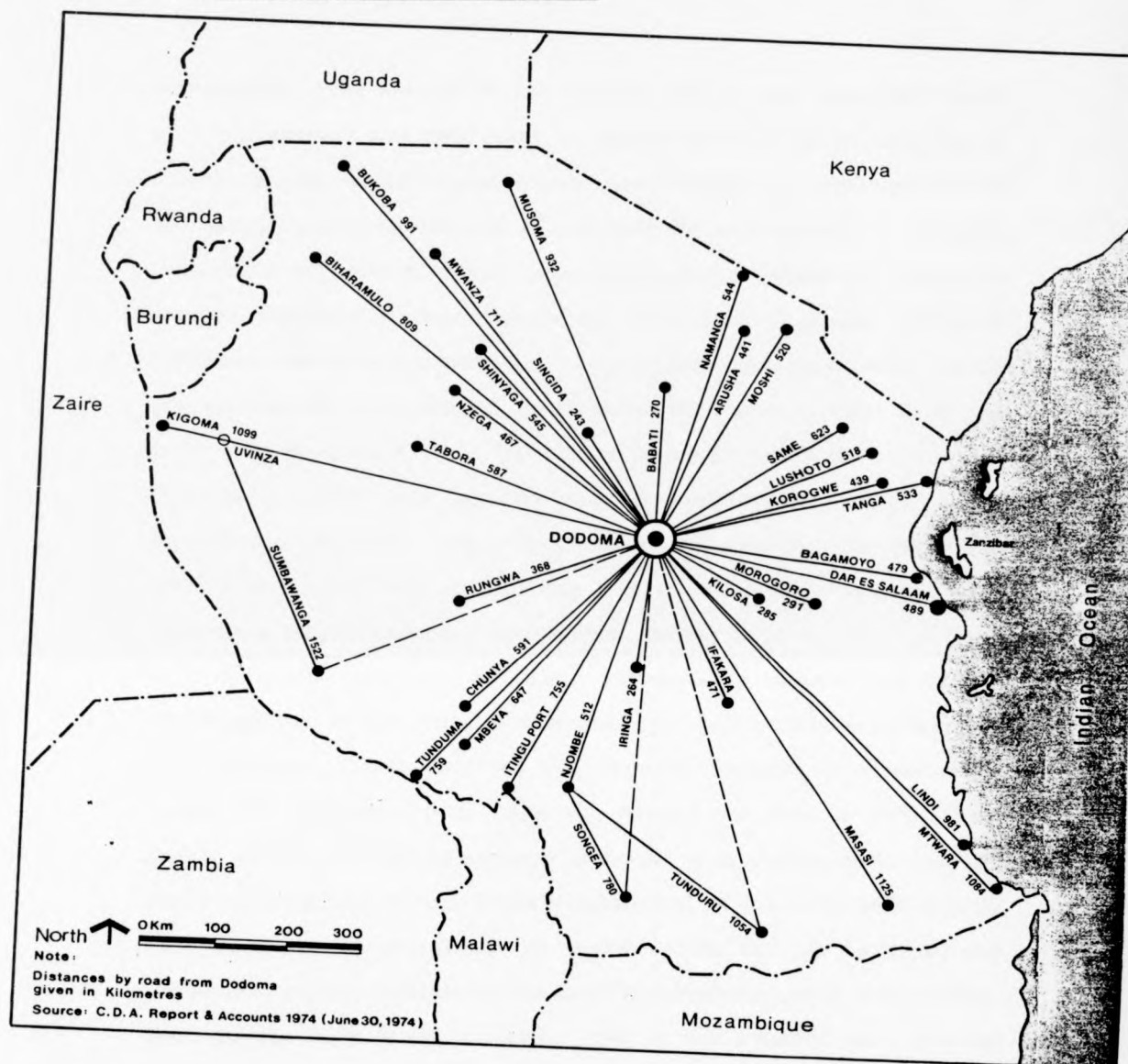
We must not forget that people who live in towns can possibly become the exploiters of those who live in the rural areas. All our big hospitals are in towns and they benefit only a small section of the people of Tanzania... Again, electric lights, water pipes,

hotels and other aspects of modern development are mostly found in towns. Most of them have been built with loans, and most of them do not benefit the farmer directly, although they will be paid for by the foreign exchange earned by the sale of his produce....¹⁴

As far as Tanzania is concerned, it is quite obvious that the above speech refers more to Dar es Salaam than any other town. This is because it has grown faster than any town in the post-independence era. The decision to move to a more central area (Dodoma) therefore means that further development will continue to spread without physical constraints as in coastal town like Dar es Salaam (see figure 7 showing Dodoma in National Setting). Apart from developmental convenience, Dodoma will serve as a growth-pole by pulling the nation together and integrating it into one unit (see Figure 8 which shows Dodoma's centrality). This particular figure also reveals the distances by road from Dodoma in kilometres to virtually every angle of the country.

Apart from the central location of Dodoma, another feature makes it most suitable as a capital city site. That is, its relative backwardness in terms of economic development. We are not unaware of the fact that some people may wonder why a place so rural and devoid of necessary natural endowment for any meaningful development should be selected. All said and done, we hold the view that there is great wisdom in taking such a decision. The capital city of a nation, in our view, cannot and should not be the exclusive preserve of areas that are economically viable. Much as one would concede the fact that areas that are blessed with natural endowment like lakes and mountains stand a better chance of providing good climate, one is also inclined to believe that unless and until some man-made efforts are made, some of the regions in Africa can never experience what is called

FIGURE 8 : MAP SHOWING DODOMA'S CENTRALITY



Dodoma, Central Location

SOURCES: National Capital Master Plan, Dodoma, Tanzania.

development. The arrival of the capital city in the region of Dodoma will necessitate and facilitate an unprecedented rate of development which the area would otherwise have never dreamt of experiencing. It is therefore both unwise and ill-advised for any country to relegate an area or any region to the background simply because it lacks some natural endowment. There could not have been a greater man-made effort on the part of Tanzania to stimulate development than siting its new capital in a region as backward as Dodoma. Apart from the inevitable proliferation of industries, there is the obvious fact that this will create new opportunities for employment to the local population. This will not only transform the region as a commercial centre but also will go a long way to encourage agricultural production by providing a large consumer market centre.

Like most political decisions, the decision to move the capital of Tanzania to Dodoma, though supported by a comfortable majority, was not unanimous. This decision was strongly opposed by a number of people.¹⁵ The majority of those who opposed the idea of undertaking such a project did so on economic grounds. Many people felt that the whole exercise was nothing but a misplacement of priority because they were at a loss to understand the reason behind such an ambitious and expensive project considering Tanzania's underdevelopment and poverty. Such people were quick to argue that a new capital was not the immediate need of the nation, neither would it solve the problems of abject poverty, ignorance and almost total lack of basic infrastructures and essential services in the country.¹⁶

The question of cost has always been a thorny issue when it comes to undertaking a big and continuing project as the building of a capital city. There are always two equally strong arguments by those

for and against such a project. Those who support the idea tend to believe that those who oppose the project on grounds of cost are either being short-sighted or deliberately expressing such views with political undertones. On the other hand, people who support such move see it as a long-term plan with an ever-lasting impact. They see it as a long-term investment which should be based on permanent considerations rather than petty political and short-sighted reasoning.¹⁷ The words of Hardoy are extremely explanatory on these two basic arguments and they are quoted at length below:

The creation of a new capital should be envisaged dispassionately. It should be, not the glory of a leader, but the hope of a whole people. The need for it should therefore be analysed coldly and evaluated as one of the many short-term and long-term projects which a nation wishes to undertake. The capital of a nation cannot be constantly shifted. Like the great works of a society at a given moment of history it has an emotional as well as an economic and social impact. There will also be a psychological moment, as well as an economic moment and a political moment, for its creation. It may be a negative policy to force the issue, to bring it into existence on a frail foundation, to mortgage the nation at an uncertain period of its development by directing the necessary investments from other programme already in progress.¹⁸

The above quotation clearly reaffirms the fact that the building of a new national capital is a serious economic and political undertaking. We share all the views expressed in the above quoted statement. Although we deeply sympathise with most of the African countries whose interior underdevelopment is not unconnected with the peripheral location of their central governments, we fully subscribe to the view that such countries must carefully consider their financial and human resources before taking such a far reaching decision as moving the capital city from one place to another. The Tanzanian case, as this chapter will soon reveal, is a clear example

of a situation where, it seems, the government did not weigh the cost involved before embarking on the project. It would also appear that, apart from failing to evaluate its financial strength, the government of Tanzania did overlook the issue of providing strong legal and administrative framework at the outset of the project. We may now move to the next section to examine these issues.

SECTION B

THE POWERS AND FUNCTIONS OF THE CDA AND THE AVAILABLE LEGAL, ADMINISTRATIVE AND PLANNING FRAMEWORK

This section will concern itself mainly with the principal functions of the C.D.A. as enumerated in the piece of legislation establishing it and examining whether or not such functions enjoy the presence of other parts of legal framework and whether or not they coincide with the powers and functions of other constituted authorities. We may begin by tracing the legislative history of the C.D.A. itself.

The history of the legislation establishing the C.D.A. is traceable to the famous Arusha Declaration of 1967 in Tanzania. The Arusha Declaration was a turning point, not only in the political and economic, but also to a large extent, in the legislative history of Tanzania. By this particular declaration, Tanzania had taken the plunge towards total socialism and self-reliance. A very significant development in the economic history of this country after the declaration was the proliferation of public agencies under various Acts of Parliament. Those public corporations were set up mainly to manage the different sectors of the economy which had been nationalized. This trend of events inevitably gave rise to the

development of a large body of laws governing the operation of public corporations. It led to a situation where the laws were becoming too many. As a result of this, the Parliament in 1969 enacted the Public Corporations Act. This particular Act gave the president more flexibility in reorganising the public sector. Under this Act the president could establish a public corporation, reorganise or even dissolve it and transfer to another organisation its assets and personnel.¹⁹ It was in accordance with his powers under this Act that the President issued an order establishing the Capital Development Authority.²⁰ Also created along with the C.D.A. was a fully fledged Ministry, the Ministry for Capital Development (hereinafter referred to as MCD). Thus the order (CDA (Estab) Order No. 230 of 1973) was the first and major legislation creating the urban development Corporation responsible for the Planning and development of Dodoma. The principal functions of the authority are enumerated in detailed form in Section 4 of the order as follows:

S.4

The functions of the Authority shall be:-

- (a) to implement the decision to transfer the capital of Tanzania to Dodoma;
- (b) to prepare plans for the development of Dodoma as the capital of Tanzania and submit the same to the president; and further to implement any such plans approved by the President;
- (c) to carry out and effect the necessary development of Dodoma so as to render the same suitable for the capital of Tanzania;
- (d) to advise and assist the Government on an orderly transfer to Dodoma of various Government and other public offices;

- (e) to acquire and hold, subject to the directions of the President land and other immovable properties;
- (f) to provide any service or facility which any Ministry, Department or Division of the Government, any public corporation or other parastatal, institution, or any company firm or other person may require for an orderly transfer of its business, activities and personnel to Dodoma;
- (g) to do anything or to enter into any transaction which in the opinion of the Board is calculated to facilitate the proper and efficient carrying on of its activities and the proper performance of its functions as specified in this paragraph.²¹

A very careful review of the main functions of the C.D.A. as contained in S. 4 of the Establishment Order quoted above reveals an important omission. That is the fact that neither this particular section nor any other provision of this enabling statute contains a description of the geographical area within which the C.D.A. is to carry out its broad planning and development functions. As far as the planning framework is concerned, the C.D.A. is to operate within the planning law system existing and applicable to the rest of the country. The principal legislation governing urban planning and development in Tanzania is the Town and Country Planning Ordinance of 1956 (hereinafter referred to as the Ordinance²²). This particular legislation was first enacted during the colonial era (December 28, 1956) and was modelled after the British Town and Country Planning Acts of 1932 and 1947. According to the "Regulations" titled "The Town and Country Planning (Development and Zoning) (Capital Development Area) Regulations, 1979, made under S.78 of the Ordinance,

the 'Regulations' shall apply to all activities relating to development within the capital development area.²³

Ordinarily, the appropriate authority for the administration of the Town and Country Planning Ordinance in Tanzania is the Minister responsible for lands, housing and urban development. However, in an effort to facilitate the development of the new capital city project, some changes were introduced. For example, powers and authority for administering the Town and Country Planning Ordinance with respect to Dodoma were transferred to and made exercisable by the Minister responsible for capital development.²⁴ A special committee was set up with representatives from both the C.D.A. and the M.C.D. and the local Authorities. This committee was conferred with the necessary powers under the Ordinance to operate as an area planning committee.

LEGAL AND ADMINISTRATIVE PROBLEMS

The first major problem that came to the fore was the question of the area of land meant to be the capital territory and its status as a planning area. In the first place, the area designated as the capital city territory was neither well defined and clearly mapped out nor declared a planning area under the principal legislation governing urban planning and development in Tanzania (the 1956 Town and Country Planning Ordinance). Thus, legally, the so called special committee which has been given the necessary powers to operate as an area planning committee had no jurisdiction over any particular area. For that committee to have full jurisdiction over any area, such an area necessarily needs to be declared as a planning area under the relevant provision of Cap. 378 of the laws of Tanzania.²⁵

Apart from this major legal omission, the powers and responsibilities of the MCD and CDA inter se and indeed between them on the one hand and the other planning and administrative authorities operating in the area on the other, were not clearly defined by any existing legislation or government policy statement. It was observed:

In many countries where a special urban development agency is set up, a crucial first matter to determine is the geographical extent of its jurisdiction and how that area of jurisdiction is to dovetail in with the area of jurisdiction of other agencies; is it to be coterminous with the main urban local authority or to extend into the area of other local authorities; how is the boundary to be determined; on political, planning, geographical or other grounds?....²⁶

Perhaps more than anywhere else, the need for adequate legal/administrative guidelines was necessary in Dodoma. This is because, as at the time the CDA and the MCD were created, there were at least six different constituted authorities whose responsibilities and functions were, one way or the other, in conflict with those of the CDA and MCD. There were for instance:-

1. The Regional Development Committee. This Committee, by virtue of its powers, could claim supervisory powers over the CDA.²⁷
2. The Dodoma Town Council. This body has the functions and powers of a normal local authority.²⁸
3. The Dodoma District Corporation. This particular authority has, under the District Corporations Act of 1973, the power to deal in land matters and undertake the development of housing units as well as commercial and industrial premises.²⁹

4. The village councils. These traditional village authorities have control over the use, layout and allocation of land. Also they have bylaw powers.³⁰
5. The Ward Councils, which have not been operative, but also have powers conflicting with those of the CDA.³¹
6. The Ward Development Committee. This committee can embark on the construction of buildings and other works for community utility.

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It can be seen from the list of the existing constituted authorities and their various responsibilities that their functions are directly or indirectly in conflict with those functions and powers specified in section 4 of the CDA establishment order. Though several attempts were made, administratively, to provide a coordination mechanism, not much success was attained. This is because the law did not provide any formal links or clear connections between the CDA and all these authorities and bodies - Regional, District, Villages, Urban Wards, Development Corporations - that have jurisdiction within the capital development area. The inevitable result of this arrangement was proliferation of agencies with similar functions, duplication of powers and almost total confusion. The most prominent area of conflict was the overlapping of powers and functions between the CDA and the local authorities. For instance, many of the powers the CDA needed to exercise in the execution of its functions were vested in the Dodoma District Corporation (DDC) and the Dodoma Town Council. These two bodies had the same broad functions and powers as a local

authority within the capital development area. For instance, it could be argued that since all powers connected with land management and allied matters provided for in the local government ordinance (Cap. 333) were vested in the Dodoma District council the exercise of similar powers by the CDA in the DDC area would be illegal. This clearly shows that the local authority powers that were exercisable within the Dodoma designated area depended upon whether they were exercised within the area of jurisdiction of the Dodoma Town council or that of the Dodoma District Council. Any attempt on the part of the CDA to exercise such powers would therefore amount to ousting the jurisdiction of the two bodies mentioned above or usurping the powers conferred on them under the Local Government Ordinance cap. 333. But for the timely intervention of some legal experts, the situation would have led to a serious setback as far as any development is concerned. Describing the scene, one of the legal experts called in to salvage the situation wrote:

There was a capital development authority with development and planning functions; a special committee - part capital development authority, part Ministry for capital development part regional and local authorities - with planning and development control functions; a town council which claimed planning sewerage and land allocations; a District Development Committee for the rural areas covered by the capital Development Authority, which appeared to exist in name only; a Ministry of capital Development which supervised the capital development authority but also duplicated some functions; and other planning ministries with land allocation and water provision functions; a public corporation for electricity provision and in addition the area of the master-plan for the new capital included a forest reserve and a range development area.³³

With this background, the reader may wonder how the Dodoma project finally took off and the basis on which the Master-Plan was eventually produced. It is important to note here that it took quite

some time before the authorities concerned were able to resolve the issue of the exact boundaries of the capital development area. This is because once the initial mistake was made in 1973 it became very difficult to be corrected. By mistake here we are referring to the initial political decision taken on 5th October, 1973 declaring Dodoma the new capital of Tanzania without demarcating site boundaries. The issue of boundary demarcation is indispensable because it is only through this that major jurisdictional disputes and constant boundary conflicts could be sorted out and compromises made. The reader may recall, from the provision of the F.C.T. Decree of Nigeria, that the Tanzanian situation contrasts sharply with that of Nigeria. The Nigerian legislation, for instance, clearly defines the length and breadth of the designated capital territory as well as the powers, functions and limits of the F.C.D.A. Although the Nigerian legislation has its short-comings, some of which were analysed in chapters four and five, it has, at least, served to avoid the initial teething problems of jurisdictions, boundaries and who does what among the agencies and their officers.

The name Dodoma could be a reference to Dodoma town only or Dodoma District or in fact, Dodoma as a region (see Fig. showing Dodoma in regional context). As far as the issue of how the Dodoma project took off finally amidst such confusion, an explanation was given thus:

Immediately following the appointment of the agency, a firm of consultants was appointed in February 1974, to undertake the preparation of the Master Plan. It will be recalled that it was then that it occurred to the authorities that no specific designated area had been determined on the basis of which the Plan could be prepared. The decision to designate Dodoma had referred to the designated area simply as Dodoma, without specifically defining the area. To pick a site, an

area stretching out over a radius of 40 kilometres from Dodoma town (about 6,400 sq. kilometres or 2,500 sq miles), otherwise called the impact area, was studied in detail. From it, three alternative sites; namely, Hombolo (22 miles north-east of Dodoma), Ihuwa (12 miles east of Dodoma), and the area around the existing town of Dodoma itself were each separately evaluated and recommended. In November 1974 both the CDA and the President chose the area around the existing town of Dodoma as the designated area for the future capital. The Master Plan was then prepared on the basis of this site.³⁴

From the above excerpt, it can be seen that, the successful implementation of a Master Plan based on such inadequate arrangement is highly doubtful. No sooner had the Dodoma project taken off than many legal and administrative problems surfaced. The inevitable jurisdictional squabbles started to rear their ugly heads suddenly and almost marred the entire exercise. It then became necessary for the authorities to look for ways and means of finding solutions to these serious legal issues which could have been avoided by either simple legislation sorting out all the jurisdictional issues or by involving lawyers in all sensitive decision making bodies at the beginning of the project. Out of all these problems threatening the successful implementation of the Dodoma project two stood out clearly. First there was the planning law framework and the inter-agency relationships. It may be recalled, we have attempted to show, in chapter four, how failure on the part of the F.C.D.A. in Abuja Nigeria, to involve the legal advisor in major policy and decision making could, in the long run, be counter productive.³⁵ In the same vein, the confusion in Dodoma was a price which the authorities had to pay for their failure to appreciate the need to involve lawyers right at the outset of the project. This also confirms our earlier observation, in Chapter One, that lawyers in developing countries are relegated to the court room and not seen as people capable of making any useful contribution in our quest for development.

When the situation in Dodoma was getting too serious the CDA had to arrange for a planning law consultancy under the auspices of the United Nations. This led to the arrival of Professor Patrick McAuslan on the scene. His series of consultancy reports³⁶ and recommendations on the planning framework and interagency relationship helped to salvage the legal situation. We may now examine very briefly some of the major proposed legal solutions as contained in one of such consultancy reports.

After a careful review of the main problems arising from the overlap of authorities and functions within the capital development area a number of proposals were made to the Director-General C.D.A. with a view to achieving legal solutions to these problems. According to the report, such solutions were to be achieved by making an order under the Decentralisation of Government Administration (Interim Provisions) Act 1972:

- (a) transferring all powers connected with land management and related matters, provided for in the local Government Ordinance (Cap. 333) from the local authorities to the C.D.A.
- (b) transferring to the C.D.A. those powers and duties currently being vested in other agencies under various Acts and Ordinances.
- (c) transferring to C.D.A. the land management and general control of by-law powers over villages.³⁷

This report further proposed that an order be made under the Transfer and Delegation of Powers and Duties Act 1962 transferring to the MCD those supervisory powers over C.D.A.'s exercise of the increased

powers and the exercise of powers over other bodies which were vested in three separate ministries: namely, the office of the Prime Minister, the Ministry of Lands, Housing and Urban Development, and the Ministry of Water Development and Minerals. Also as a long term measure, a comprehensive draft legislation was proposed defining the role and function of each agency and providing for the coordination mechanisms between them.

We must, however, make one vital observation. That is the fact that the constant inter-agency conflicts and personality clashes in Dodoma was partly a political issue. The political undertone in the matter made it almost impossible for the government in Tanzania to come out with a lasting solution which could reconcile the conflicting roles of the numerous agencies. This is a clear indication of the fact that "legal structures cannot always solve political questions"³⁸. This point of view can be fully justified when one examines the role of the political party in power in Tanzania as far as the building of the capital city is concerned. Right from the initial stage it was a party decision and when it came to the actual implementation of the project one would have thought that the special agencies created for such purposes would be given a free hand to carry out their functions without being made strictly answerable to the party circle. But contrary to this, the party had made it mandatory on the part of the C.D.A. to supply progress reports to its Headquarters and to keep the party abreast of any development as far as the implementation of the project is concerned. The authority of the ruling party was made supreme in 1977³⁹. This led to the establishment of party branches in all public and private sectors (including the CDA and MCD). With the party playing such a dominant

role, it simply means that in the event of any inter agency dispute, the supremacy of each agency will depend on its clout in government and party circles. We are of the view that this system has the potentials for slowing development, breeding regular personality clashes and frustrating development efforts in Dodoma.

Having highlighted some of the prominent legal and administrative problems that beset the CDA regarding its functions and that of other constituted authorities as well as the steps taken to remedy the situation, we may now examine the Planning framework for the CDA.

PLANNING FRAMEWORK

After discovering all the problems discussed above, all hands were on deck to provide the CDA with a valid planning framework. The first step taken was to provide and clearly define the boundary for the Dodoma designated area in accordance with the ordinance.⁴⁰ The authorities would have wanted to demarcate as big an area as possible in order to conserve a large portion of land for future expansion, but that would have meant covering an area with many agencies whose powers and functions are in conflict with that of the CDA as earlier mentioned. Thus the authorities had to settle for a small area around the immediate confines of the area to be built up that is the entire future urbanised area comprising 350,000 population according to the Master-Plan, plus some surrounding hills and open spaces to complete the natural setting for the city. However, a larger area than that needed for the city construction was retained as the planning area. This was necessary for controlling development within and in the outskirts of the new capital city. The special planning committee was

also reestablished and reconstituted with a view to bringing in and involving other agencies with planning and development role within the capital development area.⁴¹ This newly reconstituted committee is similar to, and has the same functions as, other area planning committees under the ordinance in Tanzania. The only noticeable difference is the nature of its composition. As indicated above, the special arrangement made in its composition was necessitated by the need to involve other planning agencies within the Dodoma capital territory.⁴² Among other things the committee decides on planning applications, enforcement action and approves development plans prepared by CDA for the implementation of the Master Plan. It may therefore, not be wrong to suggest that the CDA acts more or less as the executing agency for the committee. For instance, the CDA carries out the decisions of the committee on serving notices under the ordinance to stop unauthorised development. Talking about development plans and other detailed schemes to implement the Dodoma project necessarily brings us to another area worthy of our attention. That is, the Master Plan for Dodoma. As we have earlier indicated in Chapter Five, the Master-Plan is the most basic and fundamental guide to any programme of urban planning and development. We may now briefly examine the process of preparation of the Dodoma Master-Plan and its main features.

THE MASTER PLAN

After its formative stage the C.D.A. directed its attention to the first and most crucial starting point of executing any urban development programme. That is, the process of preparing a Master

Plan which will guide and govern all development activities in and around Dodoma Planning area. Having carefully considered various proposals from several International consulting firms, the C.D.A. commissioned Project Planning Associates Limited, Toronto, Canada in 1974 to assist in the design of the Master Plan for Dodoma. The drawing up of the Master Plan was completed by the consultants in the year 1976. Then action was initiated by the authority to give the Master Plan all the necessary legal backing it requires. The Plan was placed on deposit (under Government Notice No. 125 of 1978) for public inspection. All members of the public were invited to go and see, analyse and lodge any objections or make any representations before it was declared the operative plan for the Dodoma area. Apart from people within Dodoma Region, people from all walks of life and from as much of the entire nation as possible had the opportunity of inspecting the Master Plan. This included members of Parliament, students, local notables as well as the ordinary common man. The Plans were also taken to and mounted in various local and international exhibitions. It is however important to note that despite the efforts of the authorities concerned to ensure that the Plan reached as many people as possible, it attracted very few objections and representations.⁴³

Other steps taken with a view to legalising development activities under the Master Plan include the issuing of an official Government Notice revoking the previous operative scheme for Dodoma.⁴⁴ Also a new set of regulations were made to provide a framework for development control in the area. These regulations set out and provide the format and methodology for processing applications for planning consent, the powers of the development control authority

and the factors to be considered in determining planning applications.⁴⁵ With this, it can be seen that some remarkable efforts have been made to provide adequate planning framework for the Dodoma project in accordance with the Ordinance.⁴⁶ We may proceed to analyse the main features of the Master Plan.

ITS MAIN FEATURES

The Dodoma Master Plan has some basic concepts that are consistent with Tanzania's economic realities and political ideology. The new capital city is laid out in a unique radial pattern with residential communities of about 28,000 people each.⁴⁷ The most remarkable feature of the layout is the fact that these various residential communities are planned in such a way that they are connected to each other and the town centre by efficient public transport systems.⁴⁸ The Plan also emphasizes landscaping and afforestation programmes. This was not confined to the designated area only. A separate study was undertaken as a supplement to the Master Plan which embraces the entire region of Dodoma and beyond.⁴⁹ Large portion of land was also reserved for open spaces and parks.⁵⁰ We also believe that, no where has this Master Plan proved to be more unique than in its endeavour to provide for the maximum possible use of local building materials. This represents a modest and most realistic approach to urban planning and development in the Third World. There cannot be a better way of fulfilling Tanzania's aspiration for socialism and self-reliance than encouraging the production and use of local building materials. According to the Master Plan, buildings, especially in the residential areas, are to be on the ground level and are to be provided with gardens. This is a

deliberate attempt to give the residents the opportunity to grow some of the food they need in their own gardens. In fact, it was said of the new capital: "In it citizens will be encouraged to walk to work, live in houses built of local materials and grow some of their own food".⁵¹ These and similar facts were revealed in a foreword to the Master Plan by President Nyerere himself when he wrote:

..... We have to build in a manner which is within our means and which reflects our principles of human dignity and equality as well as our aspirations for our development Dodoma must be a town which is built in simple style but with buildings which reflect the light, air and space of Africa.

There are two different aspects of planning a new town. One is the designing of the major buildings and houses so that they are functional and at the same time pleasing to the eye separately and as a group. In this respect the government has already made certain basic decisions, especially that there should be maximum use of burnt bricks and clay tiles for building, and that every effort should be made to use local materials and the simple techniques for which we already have Tanzanian funds and expertise.....

I believe this plan, as it stands, is consistent with the ideology of Tanzania. Two very important examples can be given to show the way that it reflects our philosophy. First, the Plan shows that Dodoma will be built as a series of connected communities, each having a population of about 28,000 people. Within these communities people will be able to cooperate for joint activities of a productive, educational and social nature while remaining part of the larger town. The second fundamental point about this Master Plan is the way it gives priority to the building of an efficient public transport service and to the physical movement of people on foot and by bicycle. Private car ownership will become less of an advantage in the new town than it is in places like Dar es Salaam, for many roads and paths will be reserved for buses and bicycles, while inter-city and goods traffic will be confined to major service roads and the railway, by-passing the residential areas....⁵²

The reader may notice that, in our discussion so far in this section, we have attempted to highlight the main functions of the C.D.A. and to identify the adequacy or otherwise of the legal and

administrative framework within which such functions can be performed. Similarly, we have touched on the Planning framework required in executing an urban development project of this magnitude. We may now examine the structure of the C.D.A. and its powers and limitations as provided in the C.D.A. Establishment Order No. 233 of 1973 (Hereinafter referred to as The Order).

CDA - STRUCTURE, POWERS AND LIMITATIONS

By virtue of Section 5 (1) of the Capital Development Authority Establishment Order of 1973, the highest authority within the entire structure of the corporation is the Board of Directors. This section vests all the powers of management in the Board. This is a very solid foundation and that which is, in our view, necessary in any public corporation. The most important issue to be sorted out in establishing a public corporation should be that of specifying who does what between the Board of Directors and the Management staff. The enabling statute must, as in the case of section 6 (1) of the CDA order, clearly state which body is the final authority. By making the Board of Directors of the CDA as the highest authority the law has taken a big step towards the right direction. It is not wise, nor is it safe, to vest management powers solely in individual officers no matter how highly placed. Even though the Board may from time to time delegate certain functions to either the Director-General, Company Secretary or any officer within the management cadre of the CDA, Section 6 (1) of the Order provides"

The Management of the Authority is hereby vested in a Board of Directors.

This clearly places the Board over and above any officer in the Authority.

The provision of Section 6 (2) (c) is yet another commendable legal provision. According to this particular provision, there should not be less than five members nor more than nine to be appointed to the Board by the President after appointing a Chairman and a Director General. We find this provision laudable because it has put a ceiling on the number of members to be appointed. In a situation where legal limits are not provided chances are that too many people may be appointed to serve on the Board. It is not unusual to find, in developing countries, public corporations with too many people serving on the Board of Directors.⁵³ In such a case they constitute a crowd and achieve very little or nothing in their deliberations.

According to Section 5 (1) of the Order, the Director General is appointed by the President and he is the principal administrative, Executive and co-ordinating officer of the Authority. One important and excellent provision of this particular section of the order is the categorical statement making the Director General directly answerable to the Board of Directors of the C.D.A. This makes the Board as the fountain of authority. This categorical statement making the Director General responsible to the Board of Directors will, apart from instilling discipline, clarify many issues. This provision contrasts sharply with the provision of Section 5 (1) of the F.C.T. Decree No. 6 of 1976 of Nigeria. It may be recalled that, in Chapter Four, we advanced the argument that, since the Executive Secretary of the F.C.D.A. in Nigeria is appointed by the Head of the Federal Government, and since there is no clear provision in the Decree making him answerable to the Board of Directors, he cannot be controlled,

queried or disciplined by the Board. In order to fully appreciate the point we are making, we may compare the two legal provisions concerning the appointment and functions of the two chief executives of the CDA and F.C.D.A. in Tanzania and Nigeria respectively:-

Section 5 (1) of the Tanzanian legislation provides:

The President shall appoint a Director General who shall be the Principal administrative, executive and co-ordinating officer of the authority and shall be responsible to the Board.

While Section 5 (1) of the Nigerian Statute provides:

There shall be appointed by the supreme Military Council an Executive Secretary to the Authority who shall be the chief executive officer of the Authority and shall be responsible for the day to day running of the affairs of the Authority.

Though seemingly identical, these two provisions differ in one important respect. They are identical, in a sense, because they both make provisions for the procedure of appointing the chief executive of their respective urban development corporations. Their main point of distinction, from our own interpretation, lies in the fact that, while the last bit of the Tanzanian legislation refers to the answerability of the Director General, the last bit of the Nigerian statute only makes reference to the duties of the Executive Secretary. Being "responsible for the day to day running of the affairs of the Authority" is not the same as being "responsible to the Board of Directors". It is our view that in an organisation as big and as important as a Capital Development Authority issues like who is answerable to whom ought to be sorted out and clearly provided for in the enabling statute as in the case of CDA Dodoma. This ought discipline, promote efficiency and avoid unnecessary power struggles between the management and the Board.

Another laudable provision of the CDA order is Section 5 (5) which clearly states that any member who, without the permission of the Board, absents himself from three consecutive Board meetings, ceases to be a member, unless the President otherwise directs. We find this particular provision very important and indeed necessary because, in the absence of such provision, members may not take their role seriously. Also if absence from Board meetings is allowed to go unchecked, it may always be very difficult to form the required quorum for Board meetings.⁵⁴ Also, the requirement by the Statute that there should be at least one Board meeting every three months⁵⁵ is a very good way of keeping the Board active. It is only through regular Board meetings that major policy decisions and management issues can be raised and treated accordingly. There also can be a better coordination of the activities of the management staff when the Board meets regularly and deliberates on such issues. On the contrary, failure to meet regularly may affect the overall function of the Authority since most major policies are only formulated by the Board.

We, however, find the provision of Section 7 (2) to be undemocratic and counter productive. That section provides that "All meetings of the Board shall be convened by the chairman or, in his absence from the United Republic or incapacity through illness or other cause, the Vice Chairman who shall appoint the time, place and date of such meetings". We believe that there may be occasions when the Chairman may deliberately fail to call for a Board meeting even when there is an apparent need for one. Making the Chairman as the only person who can call a meeting, appoint the time place and date of such meetings, as Section 7 (2) now does, amounts to conferring too many powers on the Chairman. With such powers in his hands the

Chairman can hold all other members to ransom. One would have thought that the law here ought to have taken care of special circumstances. The ideal thing to do, in our view, is for the law to provide that certain number of members may, by writing signed by them, request the Chairman to call a special meeting of the CDA for the purposes set out in their request. The law should make it mandatory on the Chairman to, on receipt of any such notice or request duly signed by the required number of members, call a special meeting irrespective of whether he (the Chairman) is in favour of such meeting or not. This is the only way the law can encourage and sustain principles of democracy and ensure the extinction of all dictatorial tendencies within the Board. But section 7 (2) of the order, as it stands, apart from conferring unnecessary powers on the Chairman constitutes a major loophole which can easily be exploited.

We find another inadequacy on the part of the CDA order from its failure to specify the number of years for which a member may hold office. It would appear therefore, that the Board members may hold office for an indefinite period of time. Section 6 (5) provides that:

A member of the Board appointed under sub-paragraph (2) shall, unless he sooner dies or resigns, hold office at the pleasure of the President.

The above provision does not encourage efficiency from Board members. One of the ways of assessing the performance of the Board is having a definite term of office for the members. This will enable all members to pull their weight and ensure that they make some impact in all deliberations at Board meetings and general policy formulations. From this, the productivity of each individual member can be assessed and productivity, more than any other consideration, made the criteria for

reappointment to a second term of office. But in the absence of any specified period of time for which a member may hold office it is highly doubtful whether members will ever be motivated to put in their best. Productivity on the part of members is therefore not very much seen as a merit since they can only be relieved of their membership "at the pleasure of the President". "The pleasure of the President" as contained in Section 6 (5) of the Order is vague and very much less of an incentive for the Board members to be up and doing.

The main sources of funds that are available to the CDA have been enumerated under Section 12 (1) of the Order. These are, direct grants and subvention from the Central Government; loans from commercial banks and other financial institutions and any other money that may be vested in the Authority. Section 12 (2) goes to empower the CDA to borrow money by way of loan in order to meet its financial obligations. Also by virtue of Section 13 (2) of the Order, the Board "may invest all or any portion of any moneys which are for the time being surplus to its requirements in such securities as may be approved by the President". These are very positive provisions. They are positive because, the C.D.A. can raise some funds by using these particular provisions instead of relying only on the direct grants coming from the central government. Once more, this situation contrasts sharply with that in F.C.D.A. Abuja, Nigeria. It may be recalled that, in Chapter Four, we were critical of the F.C.T. Decree No. 6 of 1976, Nigeria, for its failure to empower the F.C.D.A. to explore other sources of raising funds. The Tanzanian legislation is similar to that of capital city development corporation of Malawi in this respect. Section 13 (1) of Cap. 39:02 Laws of Malawi (The law establishing the capital city development corporation) provides:

S. 13(1) The Revenue of the Corporation shall include:-

- (d) Such other sources of revenue as may be approved from time to time by the Minister.

The significance of such provision is that the urban development corporation concerned is not made to be over reliant on government as the one and only source of funds for the implementation of its projects.

There is however one important feature of the CDA Establishment Order that is, in our opinion, inadequate. That is the fact that it appears to be less emphatic on financial management and accountability. Apart from the general provisions of S.13 (1) (a) - (c) which provide for the purposes for which the Authority shall apply its funds, we cannot find any detailed and specific financial provision relating to statements of accounts or the procedure for auditing the accounts of the authority. Considering the fact that S.13 (2) of the Order empowers the Board to generate funds internally, one would have thought that a proper mechanism would be provided by the law to ensure that such internally generated funds are not misappropriated by some officials of the authority. Such financial provisions would ensure that both the direct government grants and the revenue that is internally generated are fully accounted for in a laid down procedure.

Although Section 14 of the order requires the Director General to prepare and make a report to the President on the activities of the authority twice every year, this does not strictly amount to positive provision on financial accountability. That section merely requires the Director General to "prepare and make a report of the activities of the authority and submit it to the President twice every year, so that the period intervening between any one and the next such report

shall not exceed seven months". When examined critically, it can be seen that this provision neither gives the Director General any guideline nor specific formula on how the activities of the authority is to be reported to the President. In fact, it does not say whether or not such 'activities' to be reported include financial activities.

It is however important to note here that Section 14 of the order is, in our view, a very positive provision. It provides for the necessary channel of communication between the government and the authority. What we are advocating is for the law to make a separate provision on financial matters. Thus the law, in our view, apart from requiring the Director General to prepare and make a report on the activities of the authority should have in addition made a categorical provision requiring the authority to prepare an annual statement of account and annual estimate as well as laying down the procedure for such accounts to be audited.

It can be seen from the foregoing, that we have attempted to highlight the main provisions of the C.D.A. (Estab) Order as they relate to the powers and functions of the Authority as well as the legal, administrative and planning framework within which the Authority is to operate. We may now move to the next and last section of this Chapter where we shall address ourselves to some of the more practical issues facing urban Development corporations when it comes to the actual implementation of urban development projects.

SECTION C

LAND HOLDING, FINANCIAL CONSTRAINTS, HOUSING NEEDS AND THEIR EFFECT ON THE DEVELOPMENT OF DODOMA

Like any other urban development corporation, the C.D.A. may face a number of problems in the actual implementation of the Dodoma project. In urban planning and development some of the practical problems that stand out clearly are: land acquisition, the finance with which to execute the project, housing the urban poor and the crucial issue of maintaining reasonable development standard within the new urban environment. Out of all these problems, availability of land is the initial hurdle that both the UDC and the private developer hope to cross. It is therefore necessary briefly to identify the land ownership patterns in Tanzania before we can fully evaluate the difficulty or ease with which public and private developments can be undertaken in Dodoma.

LAND HOLDING

As in Nigeria, ownership of land in Tanzania is vested in the State. The final vesting of land ownership in the State came as a result of several measures of urban land law reform in Tanzania since Independence. The country achieved its political Independence with a government committed to building a socialist society. What one may consider the first major step taken by the government to solve the problem of land tenure was the conversion of all freehold lands into government leaseholds in 1963 by the Freehold Titles (Conversion and Government Leases) Act.⁵⁶ This particular legislation was doubly

important. First, it was instrumental to bringing thousands of acres of land into the public sector of the land tenure structure. Secondly, it placed great emphasis on three important ancient principles of land tenure, namely, (i) that land belongs to the society at large and not to individuals (ii) that one's right to land is very much dependent on the use made of it; and (iii) that land is no longer a commercial commodity. Thus, instead of the old concept of paying a specific price for the land, the 1963 Act makes it only obligatory to reimburse the old holder for unexhausted improvements existing on the land converted into government leases. There was also an amendment to the Land Acquisition Act by the Parliament in 1965. This amendment was meant to ensure that the government did not, in the event of compulsorily acquiring vacant land, pay compensation other than for unexhausted improvements in the land. The Rural (Farmlands Acquisition and Regrant) Act of 1966 is yet another piece of legislation worthy of our attention. This law permitted the government to pass title to farmland from the title holder to a developer. What we can deduce from these laws is the fact that, soon after Independence Tanzania was all out to transform traditional agriculture and both land use and land tenure. These aims and objectives were clearly spelt out by President Nyerere himself in "Ujamaa: The basis of African Socialism" where he stated:

..... And in rejecting the capitalist attitude of mind which colonialism brought into Africa, we must reject also the capitalist methods which go with it. One of these is the individual ownership of land. To us in Africa, land was always recognised as belonging to the community. Each individual within our society had a right to the use of land, because otherwise he could not earn his living, and one cannot have the right to life without also having the right to some means of maintaining life. But the African's right to land was simply the right to use it; he had no

other right to it, nor did it occur to him to try and claim one.... The TANU government must go back to the traditional African custom of landholding. That is to say, a member of society will be entitled to a piece of land on condition that he uses it. Unconditional or "freehold" ownership of land which leads to speculation and parasitism (Landlordism) must be abolished.⁵⁷

These broad principles of socialism were not only limited to land use and land tenure. They were extended to cover all major means of production in Tanzania. Socialisation of landholding and other means of production was translated into reality in the famous Arusha Declaration of 1967. The Declaration states:

The way to build and maintain socialism is to ensure that the major means of production are under the control and ownership of peasants and workers themselves through their Governments and their cooperatives. These major means of production are: Land; Forests; Mineral resources; Water; Oil and electricity; communications; transport; banks; insurance; import and export trade; whole sale business; the steel machine-tool, arms; motor-car; cement; and fertilizer factories; the textile industry; and any other big industry upon which a large section of the population depend for their living, or which provides essential components for other industries, large plantations, especially those which produce essential raw materials.⁵⁸

In order to realise its objectives the government followed the nationalisation of land holding by organising the peasants in governmentally supervised settlement schemes in the rural areas.

One thing is clear from our discussion so far. That is the fact that land in Tanzania is vested in the State. As a result of the various reforms that took place in Tanzania some leading politicians in that country were quoted as saying:

All land now belongs to the nation. All land in Tanzania is public land, Tanzania soil is not for sale. All land belongs to the government and individuals only have the right to use and occupy it.⁵⁹

Now, having established that the ownership of land and other means of production in Tanzania is vested in the State, the next question relevant to our discussion in this thesis is: does this lack of private ownership in actual practice necessarily mean automatic accessibility to the land on the part of the people in and those coming into the new capital city of Tanzania? The answer is simply no. The most important point to note here is the fact that the CDA, like any other organisation or individual, does not own any piece of land. It acquires land as and when the need arises. All that CDA does is to apply to the Registrar for lands who, acting on behalf of the President, allocates the required land to the CDA. It is after acquiring the land through the above procedure that the CDA demarcates specific plots for particular projects.

The decision to move the seat of government to Dodoma brought more people to the region. This made land more scarce. The C.D.A. demarcated about seven hundred plots in Chingali East Chamwino area as a first step towards providing infrastructural services to an existing settlement for the purposes of enhancing development within the Dodoma region. This was a very timely response to the real and pressing demand for plots on which the low-income groups can build at a cost they can afford. The allocation of these plots also marked a very sensible departure from the approach adopted by the C.D.A. in the early years. Their approach then had been to demolish the houses within the squatter settlements in and around Dodoma and relocate families. Detailed findings and recommendations regarding the insecurity of tenure on the part of the low-income families in and around Dodoma are contained in a United Nations consultancy Report (April, 1981)⁶⁰. Issues relating to landlessness, insecurity of

tenure and squatter settlements were reflected and fully analysed in this report. It was observed, inter alia, that:

.... The recommended strategy therefore has two main elements: The preservations and upgrading of all those settlements which are on land suitable for housing and the acceleration of the process of opening up new areas for housing development. Only when alternative sites are available for those who would otherwise choose to squat can the development of the squatter areas be controlled. Existing settlements would be upgraded by legalising tenure and providing infrastructural services within sensitive layouts which allow for unsuitably located houses to be moved to better sites within the same area.⁶¹

The above quotation, shows that, even though all land in Tanzania belongs to the government, the low-income group are not finding it easy as far as land acquisition is concerned. It may be recalled that, in Chapter Five, we highlighted some of the disadvantages of an outright demolition of squatter settlements.⁶² A very important point worth reiterating here is the issue of legalising tenure. As opposed to the idea of demolition of the so-called squatter settlements, legalising tenure will, apart from ensuring land acquisition by the low-income group, prevent unnecessary destruction of physical structures and waste of human efforts and material resources. We must also not forget the fact that despite the absence of legal tenure, it is possible to find houses which are of very high standard in squatter settlements.

After acquiring land, the urban development corporation and the individual face yet another problem as far as urban development is concerned. That is, the finance with which to develop the piece of land acquired. We may now examine the financial constraints on the C.D.A. and the private developer in Dodoma.

FINANCIAL CONSTRAINTS

The task of building a new capital is no doubt an expensive venture. In most countries the financial aspect is either not properly examined before embarking on the project or it is taken for granted. The successful completion of such projects depends largely on the economic strength of the country involved. This is simply because the government is invariably the main financier of the project. The national budget must reflect a specific allocation to this all important scheme. Alternatively, funds could be allocated to various ministries and public agencies to build in the new capital. This is, however, not to suggest that the development of a capital city project is or should be financed solely by the central government. No matter how rich the central government may be, the private sector has a lot to contribute in the overall development of the capital city project.

In Tanzania the situation is slightly different. Tanzania's policy of socialism has presented a number of problems as far as finance is concerned. The nationalisation of all major means of production earlier discussed in this chapter and the nationalisation of rented buildings that exceeded the value of (T) Shrs. 100,000/= or that which was capable of attracting a rental value of over and above (T) Shs. 880/= per month⁶³ incapacitated all private forms of enterprise and made the contribution of the private developers and investors to be very minimal. This is a setback as far as the general rate of development in Dodoma is concerned. Although the growth of the city does not depend strictly on the funding power of the private enterprise, its role in supplementing the efforts of the central government cannot be ignored.

The only alternative the government had was to explore other sources of income so as to make up for her financial inadequacies. The C.D.A. was accordingly empowered by its Establishment Order to explore other possible avenues of raising funds for the implementation of the project.⁶⁴ Although the C.D.A. was able to raise some loans from both local Banks and foreign institutions, it was not without some initial hardship. In most cases the C.D.A. has had to show some achievable return on investment and also had to comply with the terms offered by such financiers.⁶⁵ This financial predicament facing the C.D.A. was very much compounded by the fact that the whole project was underestimated right at the outset. The government in general and the C.D.A. in particular, ought to have realised that urban development schemes of such magnitude do generally require long-term finance and careful projection of their growth and expansion. But instead, what the C.D.A. did was merely estimate (see 1974-75 Report) that the programme of transfer to Dodoma would cost the sum of (T) Shs. 3,700 million and would be accomplished in ten years time. All this financial and time target were set without giving due consideration to the natural growth and expansion of both Dodoma as an urban area and the project itself. This serious omission to make realistic calculations and projections regarding city growth and inflationary trends in world economic systems was later realised when it was discovered that not less than (T) Shs. 37,000 million would be required for that period of ten years.⁶⁶ The President himself had this to say when he was reporting the progress made on the project to the T.A.N.U. National Conference in the month of September 1975:

..... building the new capital in Dodoma is a major undertaking. Like other development work, it is being complicated further by the present financial situation and especially of foreign exchange.⁶⁷

The President however seemed to be more hopeful when he said:

The building of Dodoma will not be complete in 10 years; a good town continues to grow and to be improved. But a good foundation is being laid, there is every reason to believe that the capital will be able to be transferred to Dodoma within the time set if we are able to maintain the present pace of development.⁶⁸

These two statements were made as far back as 1975 when the Dodoma project had not actually gone very far. In order to appreciate fully the effects of financial constraints on the pace of development some five years thereafter we may examine the official statement of the C.D.A. on its financial position in the 1979/80 financial year. The C.D.A. had to support its annual estimate requiring more cash flow to implement its programme for that financial year. In a rather desperate effort to justify its demands the C.D.A. wrote:

During the first three years of the current five year plan, it has been extremely difficult for the programme to take off because of the budgetary constraints. The CDA received a total of Shs. T/280,078,000 in local funds from government works for the financial years 1976/77, 1977/78 and 1978/79 compared to a total requirement of Shs. T/653,863,000 set out under the current capital development Five Year Plan for the same period. The total estimated cost of the Five year Programme was an amount of Shs. 2 billion.

Thus, with over 60% elapsed time for the Five Year Programme the actual cash received by CDA for development was only just over 16% of the required funds under the programme. This is too low and it will be an uphill task to make up for the time lost.⁶⁹

To further highlight the serious threat this financial constraint was posing to the entire project the statement continued:

If the present trend of minimal incremental budget allocations continue, assuming inflationary factors are disregarded, it will take more than 40 years to achieve the transfer programme.

It is necessary for the government to consider seriously the need to agree on some basic minimum level of funds which should be assured every year and representations to Treasury by CDA should only be for requirements in excess of this level. The idea for such a requirement will not be new for it was recognised already in 1973 when the decision to transfer the capital was made. At that time, such a minimum was set at Shs. 370 million a year.⁷⁰

The foregoing lengthy statements show exactly the extent of the financial problems that beset the C.D.A. It is however important to note that both the C.D.A. and the Tanzanian government were not discouraged by this gloomy economic situation. In spite of the fact that the situation was so critical the authorities were fully determined to provide the nation with a new capital. They saw the construction of Dodoma as a responsibility which they must not shirk. Necessary and timely measures were therefore taken to cope with the situation.

NECESSARY MEASURES

In order to ensure that the Dodoma project was not abandoned, some series of measures were taken by the Tanzanian authorities. First of all, major public agencies like the National Insurance Corporation and The National Provident Fund were given directives by the government to invest in the Dodoma project. Also an appeal was officially made by the government to all Western powers for financial assistance in a desperate attempt to salvage the situation.⁷¹ But all these provided only a temporary solution. The amount raised was far from satisfying the huge financial requirement of the project. It

then became necessary for the C.D.A. to undertake a formal study of how to generate funds for the project. This study came out with strong proposals to the Government. It suggested the setting up of a special fund for the sole purpose of the construction work at the capital.⁷² It was able to identify three sources through which the fund could be financed. First it suggested the establishment of a 'National Housing Bond'. The responsibility for the management of this was to be vested on the central Bank of Tanzania and the National Treasury. The idea behind this is to ensure that all proceeds of sale from the government bond issue are paid over to the National capital fund. The second proposal was that sales tax be levied on all building materials and all the proceeds be equally paid to the National Capital Fund. Thirdly, the proposal suggested the tapping of the already existing workers and Farmers Housing Development Fund (hereinafter referred to as the WFHDF). This fund was set up in 1974⁷³ with the main aim of generating some funds for the construction of low-cost housing for workers and farmers. We shall briefly touch on the impact of the WFHDF on low-income housing in Dodoma later in this chapter. But generally, this fund had the capability of generating about (T) Shs. 90-100 million annually. This is perhaps one of the reasons why the proposals view it as an asset and suggested a general review of its conditions so as to make it possible to direct some percentage of its total annual proceeds to the much needy National capital fund.

The foregoing paragraphs no doubt reveal the financial constraints that the C.D.A. faces and perhaps explains the slow pace with which the building of dodoma is being executed. We may now proceed to examine how the C.D.A. can cope with the problem of housing

the urban poor and at the same time ensure that some reasonable building standards are maintained in and around the new capital city.

HOUSING IN DODOMA

Shelter has always been one of the basic necessities of human existence. We have seen, in Chapter Two, how the alarming rate of urbanization in the developing countries has led to an uncontrolled influx of people into our major towns and cities generally and our capital cities particularly. Post independence Africa is witnessing a radical change from the housing policies under colonial rule, which were introduced mainly to cater for the few privileged colonial masters while the rural population were totally relegated to the most primitive system of habitation.⁷⁴ The new policies are those redirected towards the improvement of the lot of the poorest (and by far the largest) segment of the African urban population. Tanzania stands out in her commitment to local self-reliance and decentralization of development to the grass-root level. The commissioning of a study of the use of indigeneous materials, building methods and styles based on local socio-cultural patterns in 1972 was a positive step taken towards the achievement of adequate housing facilities for the greater number of Tanzanian citizens.⁷⁵ Also, prominent among the early post-colonial attempt made by Tanzania to enhance the living condition of the rural population was the village settlement scheme earlier mentioned in this chapter. According to the Five Year Plan (1964-69), the settlement scheme was meant to bring together approximately 250 families and provide building materials for permanent housing and other social services.⁷⁶ Yet another major

stride by the Tanzanian authorities in the right path towards providing essential services and promoting communal co-existence was the famous villagisation programme. The president, in a policy statement, in 1967 on "Socialism and Rural Development" re-emphasised that the goals so clearly set out in the Arusha Declaration could only be achieved "if the basis of Tanzanian life consists of rural, economic and social communities where people live together and work together for the good of all..."⁷⁷

With this background, one may safely conclude that Tanzania has, since Independence, been making considerable efforts to ensure that the basic human need called 'shelter' is available to every family at the very minimum cost. The decision to build a new National capital opens yet another chapter in the country's determination to overcome the global problem of shelter provision. We may now examine the housing policies that are directly relevant to Dodoma and how they can solve the housing need of the low-income group.

The most crucial problem facing the average builder-occupier in the Third World today is access to finance.⁷⁸ In any construction work, and indeed in every form of development, finance is the major deciding factor. Finance here means not only cash flow. It means all the avenues open to the ordinary builder-occupier in and around Dodoma for obtaining financial assistance in cash or in kind. In order to assess the chances of such a builder in Dodoma we may first of all have to examine some of the current policies and strategies connected with financial institutions in Tanzania. Here again, it is only when examined from a broad national perspective that such policies and strategies can easily be related to the need of the low-income group in Dodoma.

LOW COST HOUSING

The promotion and development of low-cost housing in Dodoma cannot be conducted singlehandedly by the C.D.A. Three strands of policy may be mentioned which between them provide the framework for the development of low cost housing in Dodoma and assistance in that regard to CDA. First of all there is the Technical service organisations (T.S.O.). This is an institution which can effectively promote an integrated low-income housing programme in Dodoma. The main aims behind the establishment of such organisations included the idea of assisting the residents of Dodoma and the migrants to the city by way of acquiring tenure, obtaining finance and building materials as well as organising cooperative housing societies. These cooperative societies could come together and obtain loans and devise a repayment system through the help of the T.S.O. This is no doubt a very positive step towards facilitating self-help and community participation in development. Also coming together as a Cooperative Society will enhance the chances of the members in securing loans from financial institutions. The cooperative societies were established by the cooperative Societies Act No. 27 of 1968 and the rules made thereunder in the Cooperative Societies Rules GN 264/68. The Act allows the establishment or formation of two sorts of cooperative societies (i) Primary societies all of whose members must be natural persons over the age of 18 except where the registrar of cooperatives allows bodies of persons to be members; (ii) Secondary Societies, none of whose members are natural persons.⁷⁹ The Act also permits the formation of savings and credit societies, defined in Section 2 to mean a "registered society whose principal object is to encourage thrift among its members and to create a source of credit for its members at a fair and reasonable rate of interest". Another provision of the Act

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worthy of our attention is Section 42 (1). According to that section, with the approval of the registrar, a registered society may make loans to another registered society.

Based on the legal provisions quoted above, proposal was made and acted upon for the establishment of a Dodoma Housing Society (which could be a secondary society) with other primary societies as its members. The Dodoma Housing Society is, by virtue of Section 2 of the Cooperative Societies Act, a savings and credit society. Thus it could receive deposits from all its members. Also as a cooperative society, it is legally possible for the Dodoma Housing Society to, with the approval of the registrar, make loans to the primary societies which are its members. One can see from the foregoing that the low-income group in Dodoma are placed in advantageous position as far as access to housing finance is concerned.

The second important strategy adopted by the Tanzanian authorities in this direction was the establishment of the workers and farmers housing development fund (WFHDF) in 1974. We have earlier made some brief reference to this fund in this chapter. This fund was established with the specific aim of helping the low-income workers and the poor farmers to raise some money for building their own houses. The fund imposed a levy of 2%⁸⁰ on the wage bill of every employer of 10 or more employees. This fund was also meant to enhance low-cost housing in the rural areas of Tanzania, the new national capital and to assist the various housing societies. Section 14 (1) of the fund's Act specifically provides for a portion of the Fund to be used for the provision of loans to housing societies"... for the

construction by them of low cost housing (including site and service schemes) in Dodoma". Since the greater number of the people moving to Dodoma are low-income earners, the establishment of the WFHDF was a very timely and wise decision which will, in the long-run benefit not only the low income group but also the entire people and government of Tanzania.

The Tanzania Housing Bank⁸¹ is another major financial institution whose role in the development of Tanzania and contribution to the construction of the new capital in Dodoma cannot be over-emphasised. This Bank started as a "Permanent Housing Society" during the colonial period. It was later converted into a limited liability company under the name of "Permanent Housing Finance Company of Tanzania Ltd". In 1972, the Tanzania Housing Bank Act No. 34 came into effect establishing the new financial institution known as the Tanzania Housing Bank (THB). This new Bank inherited all the assets and liabilities of the old Permanent Housing Finance Company Limited. The Bank did not, right from the outset, restrict itself only to bankable projects and profit yielding investments. Rather, it concentrated more on financing mostly projects which were 'economically viable, socially desirable and technically feasible' in urban and rural areas of Tanzania.⁸² This Bank has encouraged and sustained the principles of self-help and self-reliance amongst the various communities in Tanzania. It was able to achieve this through its policy of granting loans to cooperative societies and various other able organisations.⁸³ Such group of people were not only provided with cash but also encouraged to obtain and use local building material and simple designs. The Bank favours smaller societies with 30-50 members. This was a deliberate strategy to

minimize the risk of default and also to establish a stronger sense of responsibility among the members of various societies.

Apart from providing the framework for the development of low cost housing in Dodoma generally, the above three strands of policy enhance the chances of individual builder-occupier to obtain reasonable accommodation without unnecessary hardship. They also encourage individuals and groups of people to unite and form societies for the purposes of securing housing loans.

BUILDING REGULATIONS

Before we end this chapter, the issue of building regulations governing the houses to be built in Dodoma may be briefly mentioned.

Until the late seventies the building regulations applicable in Tanzania (The Township Building Rules) were those enacted as far back as 1930 with only a few amendments.⁸⁴ This goes to confirm the point we made in Chapter Five that in most African countries the building regulations that are operational today are for the most part outdated and unrealistic. The Tanzanian society is not static and therefore any rules or regulations which are not constantly reviewed in accordance with the changing circumstances are of no use. The Building Research Unit of Ministry of Lands Housing and Urban Development in Tanzania however came out with a draft set of new building regulations for the country in 1978. We may briefly examine some of these draft regulations. We shall restrict ourselves to the set of regulations for one-storey houses on surveyed plots. This category of building regulations is the most relevant to our discussion here because it is that which concerns the low-income group.

It is important to note here that this draft was only presented in simple technical terms. Also there were no provisions showing how the rules could be administered practically. It was necessary to give these rules some legal shape and spell out all the necessary administrative procedures in the application of these rules as well as the powers of the officiating personnel and the rights and duties of all people observing the rules. This was duly done and a new set of rules was produced in 1980 entitled "THE TOWNSHIPS (BUILDING) (SINGLE STOREY HOUSES) RULES 1980". They were drafted under CAP 101 of the Township Ordinance.⁸⁵ These regulations are, if adopted, to apply to the whole of Tanzania. This means that they cover the Dodoma region as well.

Section 60 (a) of this draft regulations makes it mandatory for the local authorities to educate the local population on the existence of the rules and their implications. The draftsman has thus taken into consideration the ignorance of the local community and the lack of efforts on the authorities to publicise rules and regulations. Also S.5 of this draft regulations sets a time limit within which a decision regarding application for building permit, either positive or negative, must be communicated to the applicant. An applicant in Dodoma, or indeed any part of Tanzania, for building permit would thus be fully protected.

The most outstanding feature of this draft regulations is found in the area of maintaining reasonable building standard. These rules were pitched at a level that they encourage the use of materials that are locally available while at the same time ensuring safety and durability. Take, for instance, S.25 (2) which legalises the use of building materials like bricks, stone, concrete soil cement and blocks

for the construction of foundation, wall and floor. In order to make the provision of that section much broader and more flexible than most building rules it was added".. or any other suitable material which shall support the dead load of the full length of the wall".

With such standard building rules and regulations there is a chance that a reasonable standard of housing would be achieved in Tanzania. It is however important to note that up to the time of writing this thesis these rules have not been officially enacted in Tanzania.

The reader must by now have seen the broad picture of the major political, legal and economic problems surrounding the Dodoma project. In spite of all the problems highlighted in this chapter, we are optimistic that the people and government of Tanzania will in the end see their dream capital come to fruition. With all the efforts now being made to generate funds and the creation of possible construction resources the main problem in Dodoma will soon be overcome. With all the squabbles and jurisdictional conflicts sorted out there is a better chance that energies can be concentrated on ensuring that a new modern capital city is built in Tanzania.

This ends the two case studies undertaken in this thesis. We may now proceed to the next and final chapter where we intend to provide a comparative analysis of the major issues raised and discussed in chapters four, five and six of this thesis. The second part of the next chapter will also conclude this study by summarising all the theoretical and practical issues discussed in this thesis and offering some suggestions on the importance of law and administration in urban planning and development especially as they relate to Capital Development Authorities.

CHAPTER SIX

NOTES AND REFERENCES

1. See R.W. James Land Tenure and Policy in Tanzania University of Toronto Press, 1971, p.1.
2. See Union of Tanganyika and Zanzibar Act No. 22 of 1964.
3. See Surveys of African Economics, Vol. 2, Chapter 8 (published by the IMF, 1969).
4. See Sayers, G. F., The Handbook of Tanganyika, MacMillan and Co Ltd., 1930, pp.52-60, See also "Towns and Defensible points", A Handbook of German East Africa, prepared on behalf of the Admiralty and War Office Intelligence Division, January 1916, I. D. 1055, pp.160-196.
5. See R. Coupland, "The Exploitation of East Africa", (1968 Edt.) Chapter 15.
6. See The East Africa Royal Commission Report, 1953-55, Chapter 2, paragraph 48.
7. See Capital Development Authority Reports and Accounts, Dodoma, 1974, p.6.
8. E.A.R.C. Report, Chapter 2, paragraph 50, See also preamble to Tanganyika order in council of 1920.

9. One of the first steps taken by Britain was the issue of the Tanganyika order in council of 1920 under the Foreign Jurisdiction Act of 1890.
10. C.J. Maruma Legal and Administrative Aspects of British New Town Development Corporations (unpublished) L. L.M. Thesis) University of Warwick, 1980, p.163.
11. National Capital Master-Plan, Dodoma, Tanzania, prepared by Project Planning Associates Limited of Toronto, Canada, 1974, p11.
12. Kahana, C. G. (Director General CDA), Introduction to a Portrait of Dodoma, Capital Development Authority, Dodoma, published by National Printing Company, Dar es Salaam, 1975, p.6.
13. Percival, R. N. Dodoma: A new capital city for Tanzania, British International Town and Country Planning Summer School Report, 1975, pp.95-96.
14. Nyerere, J. P. Ujamaa: Essays on Socialism. Oxford University Press, London, 1968 pp.27-28.
15. A. M. Hayuma, "Dodoma: The Planning and Building of the New Capital City of Tanzania" HABITAT INTERNATIONAL, Vol. 5, no. 5/6, 1980, pp.653-680.
16. See Daily News, 28th November, 1972.
17. These two vital arguments were strongly presented to the Aguda Panel in Nigeria. See Footnote no. 25 Chapter Four.

18. See Hardoy, J. E., The Planning of New Capital Cities, The Planning of Metropolitan Areas and New Towns, United Nations, New York, 1967, p.248.
19. See Ghai, Yash, "Law and Public Enterprise in Tanzania", In Ghai Yash (Ed) Law in the Political Economy of Public Enterprise, Scandinavian Institute of African Studies, Uppsala, 1977, p.211.
20. See Capital Development Authority (establishment) order no. 230 of 1973.
21. Ibid. section 4.
22. Cap. 378 of the laws of Tanzania.
23. See Government Notice No. 14, published on 22.2.1980.
24. See Transfer and Delegation of Powers (Town and Country Planning) (Dodoma) Order, Government Notice No. 260 of 1974.
25. See Sections 2 and 36 of Cap 378 of the laws of Tanzania.
26. See McAuslan, J.P.W.B., Consultancy Report to the Director-General, C.D.A., April - May 1977.
27. See The Decentralisation of Government Administration (Interim Provisions) Act No. 27 of 1972 as amended by Act No. 15 of 1976.
28. See Urban Councils (Interim Provisions) Act 1978.

29. See District Corporation (Establishment) (Amendment) Order, GN 52/75 made under District Corporation Act 16/1973.
30. Villages and Ujamaa Village (Registration, Designation and Administration) Act No. 21 of 1975.
31. See Urban Wards (Administration) Act No. 10 of 1976.
32. See Ward Development Committee Act No. 6 of 1969.
33. McAuslan, Patrick, "The Legal Environment of Planned Urban Growth" Public Administration and Development, Vol. 1, p.309.
34. C. J., Maruma, LL.M Thesis, op. cit. p.176.
35. See Footnote No. 53 of Chapter Four.
36. See for instance, McAuslan, J.P.W.B., consultancy report to the Director General CDA Dodoma, Consultancy April-May 1977. op.cit.
37. Ibid, p.111.
38. McAuslan, "The Legal Environment of Planned Urban Growth", op. cit.
39. Interim Constitution of Tanzania. 1977, Section 3(3).
40. See The Dodoma National Capital Planning Order, Government Notice No. 63 of 1978.

41. See The Area Planning Committee (Dodoma capital development Area) (Constitution Proceedings and Delegation of function) Regulations GN No. 99 of 1978. This committee was first established in February 1974 by Government Notice 260/74 and the relevant parts amended by the Transfer of Powers and Duties (Town and Country Planning) (Dodoma) (Amendment) Order No. 62 of 1978.
42. The membership of this committee was as follows: The CDA - five members; the MCD - two members, one of whom is the Chairman of the committee; the local authority - three members and the Regional Development Director - one member.
43. See The Dodoma General Planning Scheme (Deposit) Notice GN No. 125 of 1978.
44. The previous operative scheme for Dodoma was "The Dodoma Planning Scheme of 1966". This scheme was revoked by Government Notice No. 8 of 25/11/1980.
45. These regulations have been duly gazetted. See Government Notice No. 14 of 22nd February 1980.
46. See Sections 23, 29-33 and 36 of Cap. 378 of the laws of Tanzania.
47. The National Capital Master Plan Dodoma. op. cit. p.28.
48. Ibid. p.34.

49. Master-Plan Technical Supplement No. T.S. 6 Regional Study: a statement of potential. This supplementary study to the Master Plan was meant to unravel the region's potential for agricultural production as well as its potential as a source of building labour.
50. The Master Plan, op. cit. p. 27.
51. "Dodoma: a man-made city for man", Daily News of 5th June 1975.
52. See President Nyerere's foreword to the National Capital Master Plan, op. cit. p.VII.
53. In Plateau State of Nigeria, for instance, during the last civilian administration, due to the lack of legal limit on the number of membership of public corporations, many politicians were appointed to several Boards without any criteria. This was seen as a political reward to those who helped the ruling party.
54. Section 8(1) of the CDA Establishment order requires a simple majority of the total number of the members of the Board to constitute a quorum.
55. See Section 7 (1) of the CDA Establishment order - Ibid.
56. Cap. 523.
57. Nyerere, J., National Property: Uhuru na umoja: A selection from Writings and Speeches, p.37.

58. The Arusha Declaration, and TANU's Policy of socialism and self-reliance, February 1967, Dar es Salaam, Government Printer, p.3.
59. Quoted by Lyall Andrew: Consent to Disposition of Land in Tanzania - Socialism or the Extension of Private Property, (1971) E.A.L. Review, Vol. 4, p.247.
60. See Low Income Housing in Dodoma - Project Proposal Report submitted to UNCHS Habitat by ICHDA/UN Consultancy April 1981.
61. Ibid, p.1.
62. See Footnote 60 (Chapter Five).
63. The Acquisition Act of 1971.
64. See Section 12 of the CDA Establishment Order No. 230 of 1973.
65. C.J. Maruma, op. cit. p.210.
66. Capital Development Authority Reports and Accounts No. 2, 1974-75 Dodoma, p.4.
67. Ibid.
68. Ibid.
69. CDA, 1979/80, Capital Development Programme Budget.

70. Ibid.

71. See 'The Guardian', Issues of 16th June 1979 and 13th July 1979.

72. For more details on the proposals see "Study of the proposed National Capital Fund, December 1978, by Messrs. Cooper and Leyland Associates Ltd.

73. See The Workers and Farmers Housing Development Fund (Financing and Management) Act No. 20 of 1974.

74. U.U. Uche, "The Law, Policies and Rural - urban Migration in Kenya". In Kanyeihamba, G. W. and McAuslan, J. P.W.B. (Ed) Urban Legal Problems in East Africa 1978, Uppsala: Scandinavian Institute of African Studies, p.45.

75. See Edvardsen, K.I. and Hedgal, B. Rural Housing in Tanzania: A Report on a Pre-study, National Housing Building Research Unit, Ministry of Lands, Housing and Urban Development, Dar es Salaam, 1972.

76. Tanganyika. Five Year Plan for Economic and Social Development (FYP) 1st July, 1964- 30th June, 1969, Vol. I Government Printer, Dar es Salaam, 1964.

77. J. K. Nyerere, Socialism and Rural Development, Dar es Saalam, September, 1967, P.12.

78. See Geoffrey K. Payne, Urban Housing in the Third World
Routledge and Kegan Paul, London, 1977, p.49.
79. See Section 2 cooperative societies Act 1968.
80. See Section 3(1) of the Workers and Farmers Housing Development
Fund Act No. 20 of 1974.
81. See the Tanzania Housing Bank Act No. 34 of 1972.
82. See Tanzania Housing Bank, Lending Procedures and Project
Appraisal manual, May 1980, p.2.
83. Ibid. P.4.
84. See The BRU Building Rules for One Storey Houses on surveyed plots
(Draft),. 24:4: 1978 p.1 (Preface).
85. This was only a draft, the only difference being that it has legal
and administrative procedures clearly stated and thus making its
operation much easier.

CHAPTER SEVENCOMPARATIVE ANALYSIS, SUMMARY AND CONCLUSION

The last three chapters have examined in a rather detailed form the emergence of two new capital cities in Africa that are distinct and yet quite similar in many respects. We have equally attempted to analyse the powers, functions and limitations of the urban development corporations shouldering the responsibility of building and managing these newly created capital cities. In a nutshell, chapters four, five and six of this work represent the two case studies undertaken in this thesis. This chapter is meant to provide an opportunity for some comparative analysis of the main issues raised and discussed in these two case studies. At the same time, this is intended to be the concluding chapter of the thesis. It will therefore also undertake a brief summary of all the main points considered in the whole thesis and conclude by offering suggestions based on our findings.

This chapter is divided into two major sections. Section A compares and contrasts the two case-studies in terms of their historical background, legal and administrative framework as well as their similarities and differences in terms of development pace and infrastructural provisions. Section B concludes the thesis by summarizing both the theoretical and practical issues highlighted from chapter one right through to chapter six and by offering some suggestions on how to solve possible problems in the future.

SECTION A

COMPARATIVE ANALYSIS

HISTORICAL BACKGROUND

As already indicated in the preceding chapters, both Lagos and Dar es Salaam were inherited capitals from the colonial administration in both countries. It is quite clear, from our previous discussion on this particular issue, that these capitals were meant only to serve the political purpose and economic convenience of the former colonial masters. No sooner had both countries gained their political independence than they realised the disadvantages of having their capital cities at the periphery. As far as their erstwhile colonial masters in both colonies were concerned they did not make any real plan or give any serious thought to the possibility of future expansion of either Lagos⁽¹⁾ or Dar es Salaam⁽²⁾. Since both cities were coastal towns the colonial administration seized the opportunity of establishing them as small but convenient administrative headquarters without giving any consideration to their potentials of becoming large metropolitan centres, primate cities or major regional cores in the future. Another point of similarity in both cities is the concentration of major commercial and industrial activities in Lagos and Dar es Salaam almost to the total neglect of their respective hinterlands.⁽³⁾ The peripheral nature of these cities coupled with their status as the biggest commercial and industrial centres of their respective countries became the main reason behind the complex and intractable urban problems that characterised daily life in both Lagos and Dar es Salaam. Both cities witnessed a daily influx of migrants from the rural areas and both

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could no longer cope with the pace of rapid population growth. Life became very difficult particularly for the urban poor.

Administrative agencies were grossly inefficient and unco-ordinated. Traffic congestion and water shortages in both Lagos and Dar es Salaam were retarding industrial production and mass urban unemployment was almost becoming a threat to political stability.

With this background it is then little wonder that these two countries decided to shift governmental functions to lesser developed regions in their interior. The emergence of Abuja and Dodoma is therefore the result of a similar decision by both countries to reject their former capital cities of Lagos and Dar es Salaam as colonial relics and opt for a new site from where development would spread evenly to every nook and corner of their respective national boundaries. Another very important political feature which is, by accident or by design, common in the decision taken by both countries is the desire to move the capital to a region that is geographically central and with no distinctive claim to individuality (see figures 1 and 8). In a country like Nigeria, for instance, regional interests are so divergent that no single tribe or region within the federation can have absolute political superiority.⁽⁴⁾ Similarly, Tanzania has different tribal and ethnic groupings with conflicting interests⁽⁵⁾. The decision by both countries to shift their seat of government to an interior central location maybe one of the possible answers to such inter-tribal and inter-regional rivalry. It is important to observe here that this type of situation is not peculiar to Nigeria or Tanzania. D.H.K. Spate had this to say when commenting on the same issue regarding the capital cities of New Delhi and Canberra:

The device of forming a neutral district abstracted from the control of any of the states of the federation and the building therein of a new city devoted specifically to federal administration is an obvious answer to the problem.⁶

From the foregoing it can be seen that the historical background of Lagos and Dar es Salaam, their geographical locations and the circumstances surrounding their inadequacy as capital cities are the same. We may now briefly examine the presence or absence of proper legal framework in the functions of the urban development corporations created by these countries to implement the practical construction and management of these new capital cities.

LEGAL FRAMEWORK

It may be recalled that we have attempted, particularly in chapter six, to establish the fact that the most essential foundation to any development project is a proper legal and administrative framework. In other words, all development corporations that execute major development schemes require, as of necessity, some basic guidelines to direct and regulate their functions.⁽⁷⁾ This is becoming increasingly necessary due to the current proliferation of public corporations with varying powers and functions, particularly in the developing nations. Failure to provide proper legal and administrative framework, as already shown in chapter six, will necessarily result in overlapping and duplicating responsibilities, making co-ordination difficult and causing uneasy co-existence among various development corporations.

In Tanzania, unlike Nigeria, there seems to be no proper foundation laid or action taken to ensure the presence of sound legal and administrative framework for the C.D.A. The government either

inadvertently failed to realise the need for a basic legal framework and as such could not envisage the consequences its absence had in store for them, or they deliberately ignored the idea of providing one on the single assumption that Dodoma is 'a one-off project'. One is inclined to believe here that the authorities in Tanzania did not consider the construction of Dodoma as part of an important on-going national planning policy. This is clear from a statement made by a personality of no less importance than Mr. C. J. Maruma, a lawyer and former secretary to the capital development authority. On the issue of having a special piece of legislation to create and guide the functions of the CDA he had this explanation to make:

The need for a special legislation had been recognised, but it was considered impolitic to indulge in it at that time. The decision to move to Dodoma had been debated and hotly contested at various forums of the party throughout the country, and although the majority opinion turned out to be in favour, it was thought that significant opposition to it was harboured among other quarters. Tabling a Bill for an Act of Parliament would have meant reopening the debate all over again at a new forum. The President, as head of both government and the sole political party, was anxious to see the project off the hook. He could well have preferred the safety of the party rather than parliament as a forum for debating what was still a controversial issue. The government, therefore resorted to its powers under the existing laws to establish an agency to get on with the project.⁽⁸⁾

This statement above raises many political and legal issues, of particular relevance here is the need for a separate statute spelling out the powers and functions of the C.D.A. According to Maruma's explanation, this special need was recognised by the authorities in Tanzania, but the President 'preferred the safety of the party' rather than Parliament as a forum for debating the issue. This simply shows that the authorities chose a forum (the party) where their ideas could be sold easily. The above statement also shows that the President

overlooked the need for a separate statute creating the C.D.A. and spelling its powers and limits on the ground that he 'was anxious to see the project off the hook'. We believe that, had the matter been debated in Parliament, the necessary legal framework would have been provided.

The Tanzanian situation is significantly different from what obtained in Nigeria. The creation of the F.C.D.A. in Nigeria was preceded by a long period of collection and thorough examination of private and official opinions, intellectual and expert advice, open debate by members of the public and the submission of memorandums to a committee specially formed and charged with the responsibility of advising the government on the issue of relocating the capital city. This was followed by official presentation to the government of the findings and recommendations of that committee of able members and chairman in the person of Justice T.A. Aguda, a prominent lawyer and a distinguished judge. On the contrary, Tanzania's situation reveals a decision taken within the party circles and the approval of a committee report by the same party followed by the use of the 1969 Public Corporations Act to establish the CDA. It may be interesting to note also that this particular Act gives the President the power not only to establish but also to dissolve any public corporation and transfer to another organisation its total assets and personnel⁽⁹⁾. It was under this power that the C.D.A. was created by the President.

On the other hand, the Federal Military government in Nigeria promulgated a special Decree establishing the area of land to be known as the Federal capital territory and an autonomous urban development corporation to be known as the Federal Capital Development Authority.⁽¹⁰⁾ It may be recalled that we have, in chapter four,

analysed this particular statute and highlighted some of its main provisions. This law contrasts sharply with the 1969 Public Corporations Act of Tanzania which the President used to establish the C.D.A. Apart from defining the exact area of land that forms the geographical boundaries of the new capital territory, this statute clearly enumerates the functions and powers of the urban development agency involved in the planning and development of this all important project.⁽¹¹⁾ Section 7 of this Decree makes it impossible for any individual, group of people or body corporate to lay claim to any powers of development within the capital territory. This section prohibits any form of development which does not enjoy the approval of the F.C.D.A. Thus, the law makes the F.C.D.A. the nerve centre of all development activities and the fountain of authority within the capital territory.

The situation in Nigeria is therefore radically different from that of Tanzania as far as the initial legal and administrative framework is concerned. Another point of contrast can be seen from the initial committees set by both countries in connection with these two important projects. The team of experts which the Tanzanian Government commissioned to undertake a study of the proposed move to Dodoma⁽¹²⁾ had very limited terms of reference. The main task of that committee was to assess the feasibility and present cost estimates of the project. But in the case of Nigeria, the Aguda panel travelled far and wide both within and outside the country to collect information, ideas and opinions, to see similar projects under construction and to compare and contrast all available data before submitting a fully documented report of their findings and recommendations to the government.⁽¹³⁾ This goes to show the

thorough manner in which the committee conducted its work as well as the different shades of opinion it gathered in the course of its work. A particular point worth mentioning here is the involvement of lawyers right from the inception of the project by the Nigerian authorities. With a distinguished legal scholar of Aguda's calibre as the chairman of the committee and a very senior member of the Bar, Chief Owen Fiebai (later appointed High Court Judge)⁽¹⁴⁾ as one of the members, the committee could not have had a better legal sense of direction. This, perhaps, does explain why most of the legal and administrative problems which surfaced in Dodoma, shortly after the construction work had began, were not experienced in Abuja. Such teething problems were easily identified by the committee and necessary recommendations made accordingly. This contrasts with the failure of the Tanzanian authorities to involve lawyers at the beginning of the policy stage. There is no doubt that this would have saved a lot of time, money and energy by avoiding some of the jurisdictional conflicts discussed in chapter six. A stitch in time, it is said, saves nine.

The most outstanding display of legal foresight by the Aguda committee in Nigeria is found in its recommendation to the government that:

In the event of the government accepting our recommendation regarding relocating of the Federal capital, we do recommend that provision be made in the proposed constitution for the area of the capital to be included in that constitution. Such a provision should be one of the entrenched clauses of the constitution in order to prevent any future government from shifting the capital without securing majority opinion of the electorate.⁽¹⁵⁾

The Federal Military Government in Nigeria had no hesitation in coming to the conclusion that the above was a wise and genuine recommendation and hence the F.C.T. Decree was entrenched in the 1979 Nigerian

constitution. Apart from portraying an excellent foresight on the part of the committee this recommendation and its subsequent acceptance clearly manifest a genuine desire to provide an everlasting basic legal framework governing the implementation of a project to which the government is strongly committed.

Another important point of distinction can be found between the Abuja and Dodoma projects in terms of development pace. Though the Dodoma project was started much earlier than that of Abuja its development pace is relatively far behind. This is due to a number of reasons. First of all, when the Master Plan for Dodoma was completed the C.D.A. was faced with the problem of construction resource capacity. Essential building materials and construction machinery were grossly inadequate and the country could not afford to bear the excessive cost of importing such materials. It therefore became obvious that both the C.D.A. and the Government had no choice but to shelve the actual building of the capital city and direct all efforts towards the building of construction resource capacity.

Unlike the C.D.A. the F.C.D.A. in Nigeria did not experience such a poor start. Apart from availability of essential building materials Nigeria is relatively richer than Tanzania and as such the F.C.D.A. could afford to import materials and manpower from overseas. When the Abuja Master Plan was approved in 1979 the F.C.D.A. started construction almost immediately.⁽¹⁶⁾ Furthermore, the unnecessary legal squabbles and inter-agency disputes which the C.D.A. faced in Dodoma was virtually absent in Abuja. Thus the atmosphere in Abuja was economically, administratively and legally conducive to effective and speedy development while the C.D.A. in Dodoma had to put up with so many economic, administrative and legal problems.

The contrast in the pace of development between the Abuja project and that of Dodoma is, in our view, more glaring in the obvious economic contrast between Nigeria and Tanzania. It is however important to note that, considering the huge financial demand of capital projects in urban development generally and the magnitude of both Abuja and Dodoma projects in particular, both F.C.D.A. and C.D.A. expenditures are having serious impact on the overall economy of both countries. This may explain the strong opposition made in both countries against these projects on grounds of cost.

Housing is yet another area where the two countries seem to pursue different policies. As earlier explained in chapter six, the Tanzanian Government has been very responsive to the need of the ordinary people in terms of shelter provision. Not only has the government tried to provide adequate shelter but most importantly it placed more emphasis on the need to mobilise savings and facilitate access to credit for the purposes of shelter provision. The Workers and Farmers Housing Development Fund (WFHDF) and the Tanzania Housing Bank (THB) earlier discussed in chapter six reflect the positive policies of a government committed to the general welfare of both urban and rural population.

The Nigerian rural and urban population do not, unfortunately, enjoy the same treatment. There has not been any comprehensive or clear-cut national housing policy in the country. It can be seen, from our discussion in chapter five, that both the rural dwellers and the urban settlers in Nigeria cannot mobilise sufficient savings nor have access to credit for the purposes of shelter provision.

Whatever differences one may highlight between the F.C.D.A. and the C.D.A. and between Nigeria and Tanzania, there are some points of

striking similarities that one must endeavour to mention. Both countries were under British colonial rule for several years and there were common motivating factors and post colonial experiences that prompted these countries to move their capital cities into the interior parts of their respective national boundaries. Each country took that decision in order to move away from the large cosmopolitan commercial centre to a relatively less developed part of the country with the main aim of carrying development into the interior and at the same time providing a neutral ground without tribal or regional domination. Similarly both countries have chosen to execute these all important projects through an autonomous government sponsored Urban Development Corporation. Thus, both countries did not choose to execute urban development scheme of this magnitude either through a local Government or a purely commercial enterprise. The creation of F.C.D.A. and C.D.A. and the subsequent role given to these corporations by the statutes creating them was not a mere coincidence. Rather, it was, and still is, a clear manifestation of the importance of Urban Development Corporations and the confidence people and governments in the developing countries have in them as necessary vehicles for building and managing planned urban environment.

Similarities can also be found in the form and functions of the F.C.D.A. and the C.D.A. Both corporations have a Board of Directors with a Chairman and members. In both corporations the Chief Executive is not appointed by the board. In Tanzania the Chief Executive is appointed by the President while in Nigeria he is appointed by the Supreme Military Council as earlier discussed in chapters four, five and six. Also both Abuja and Dodoma represent the largest single urban development project ever undertaken by Nigeria and Tanzania

respectively. It may also be added that the special prominence given to these projects in both countries reflects not only their magnitude but also their importance in the attainment of the post Independence economic development objectives of these countries. We may now go to the next and final section of this last chapter to undertake a brief summary of the major issues raised and discussed in this thesis and to offer some suggestions based on our findings in the research work undertaken.

SECTION B

SUMMARY AND SUGGESTIONS

As earlier indicated, this section will attempt to summarise some of the most fundamental issues highlighted in the main body of this work and offer some suggestions on how such issues should be treated in future. It may be recalled that we started this thesis by examining some of the theoretical issues that relate to the role of law and lawyers in the development process. Similarly, we intend to conclude by analysing and showing how those various theoretical viewpoints were reflected in the practical problems highlighted in this work. Our summary will therefore begin from the practical issues raised in chapter two.

We have attempted to show that in both the developing countries and the advanced nations rural-urban migration has been the chief contributor to total urban population growth and directly responsible for the inability of such urban centres to cope with the influx of people in terms of economic opportunities and basic infrastructural provisions. The capital cities, more than other urban centres,

continue to experience accelerated population growth resulting in desperate need for extra housing, water supply and severe population pressure on the land. In a nutshell, our discussion in chapter two is an attempt to examine the world-wide phenomena of urbanization - its extent, nature, causes and consequences - with special reference to capital cities. When the migration trend showed every sign of continuing, advanced countries like England adopted the policy of creating new towns to decongest their capital cities and open up new economic opportunities in the countryside. But in some countries of the Third World it has been a different strategy.

Since Independence the migration of people from the countryside to the urban centres of Third World countries has been as a direct consequence of official government policies aimed at stimulating economic growth, industrial expansion and the provision of urban infrastructures. What these various policies did manage to do was encourage massive city ward migration and maximize urban squalor. In most countries official government policies restricted the establishment of industries and the provision of infrastructural facilities to the capital cities. These policies boosted the urban economy at the expense of the rural areas. They also directly or indirectly increased population mobility which inevitably resulted in massive unemployment, poverty and acute shortage of urban land in most capital cities of the developing countries. These social and economic problems, coupled with other political considerations led a number of African countries to shift their capital cities to areas that are fairly central in terms of geographical location and relatively underdeveloped. The most relevant question that readily comes to mind here is whether such measures can achieve the desired effect.

Indeed one could pose the question somewhat differently by asking whether the creation of a new capital at enormous financial cost is a strategy good enough to arrest rural-urban migration and ensure the attainment of social and economic development in the developing countries.

Our considered opinion here is that creating a new capital city without reviewing overall government policies in the Third World countries will only lead to a limited success. The most effective method of solving the persistent social and economic problems of major urban centres of the developing countries is not necessarily the relocation of their capital cities. We do not underestimate the weight of political considerations as against other considerations when a decision is to be taken concerning the relocation of a capital city. However, we are of the view that, there can be no guarantee that shifting the capital city of a country will automatically lead to an improved urban environment in the newly created capital or ensure rapid economic growth in every region of the country. But wherever the need to shift the capital city is obvious it should be accompanied by reviewing the present government policies of neglecting the rural areas and concentrating social, economic and political activities in the capital cities. It follows therefore that the ability of newly created capital cities like Abuja and Dodoma to solve the main problems that necessitated their creation depends crucially on the nature of the official government policies regarding the establishment of major industrial and commercial institutions in those countries. If the same old trend of concentrating economic and political activities in Lagos and Dar es Salaam continues the whole purpose of building the new capitals would be defeated and the same old problems discussed in chapter two will resurface in Abuja and Dodoma respectively.

Our discussion has shown that in both the advanced countries like England, where the building of new towns has been adopted as an effective way of decongesting the capital cities and in developing countries, like Nigeria, Tanzania and Malawi, where the strategy appears to be the building of new capital city, the issue that arises is the choice of suitable agencies capable of executing such urban development projects. In both the developing countries and the advanced nations autonomous urban development corporations appear to be the most popular choice as opposed to Local Authorities or purely Commercial Enterprises. Such development corporations may be those established by the central government or in some countries by the regional or State government. Each urban development corporation may be an autonomous agency with its aims and objectives defined seeking to make use of scarce resources within its area of operation. In other words, the New Towns Development Corporations in Britain, the Federal Capital Development Authority in Nigeria and the Calcutta Development Authority in India, for example, may all have their individual goals but there are some fundamental goals which are common among all urban development corporations wherever they may be. These development corporations increase the involvement of the central government in the development of the urban environment without necessarily having to rely on the urban local government. Also, the various projects that such corporations embark upon are meant to benefit the urban poor in particular and the society in general. Such projects, be they the building of new towns, the construction of a new capital city or programmes of urban renewal, are essentially meant to enhance all the basic services that contribute to desirable living conditions. Also in the course of achieving these main objectives other related advantages

accrue to the society. These include the opportunity for social interaction, employment opportunities and the positive effects they have on the average household income. Thus, apart from the physical implementation of urban development schemes urban development corporations can serve as agents of fair income distribution and ensuring higher standard of welfare for lower income groups. There can be no doubt therefore that the goals of such corporations are laudable and this may explain why various governments rely more on them than on Local Governments or Private Commercial Enterprises when it comes to urban planning and development. But whether such urban development corporations are making any major breakthrough in achieving such goals depends largely on the legal, administrative and planning framework under which they operate as the reader may have noticed in the two case-studies undertaken in this work. But before summarising the strengths and weaknesses of the urban development corporations and the impact they make on overall urban development and administration, we may summarise the place of land tenure and land administration in urban planning and development.

An attempt was made in chapter three to highlight the position of land not only as the focal point of physical development but also as the single most essential item throughout the urban development process. The root cause of the land problems being experienced in the process of applying our modern day economic development strategies in Africa can be traceable to the ancient concept of communal land ownership. Such concepts of land ownership and other various traditional land uses have been branded as the principal causes of

uncontrolled growth and main reasons behind the financial burden on the part of the public sectors that require urban land for public utilities and services. From this basic fact stems the growing conflict between private rights and public interests. Of all the arguments against the customary land tenure in Africa, two appear to stand out clearly. Since the occupier of a piece of land does not, under customary land law, own that piece of land as an individual, he, it is argued, cannot alienate the land with the view to raising funds for urban development and also he does not have the incentive to develop that piece of land properly. The second outstanding argument is that of land fragmentation within the community as more children are born. Such premature sub-division reduces the land into very small units so much so that they are unfit for any meaningful development project. Fragmentation also creates unnecessary difficulties for land assembly. The results of all these, as discussed in chapter three, are uncontrolled growth, land speculation and great financial burden on the part of public authorities that require land for state projects. It may however be recalled that we have attempted to show that despite the scholarly criticisms made against the communal land tenure systems in traditional African law, some pre-colonial African states appear to have recognized private rights over land, albeit rights of a somewhat different order from those recognized by Western States. Also in societies where communal landholding was practised the term 'communal tenure' has generally meant rights over land held by a family or kinship group, or at most by a small territorial unit, and not a monopoly by the state. Private rights were in most cases based on the effective utilization of land, and even in such societies an ample supply of little used land was

available for state projects and in exceptional circumstances family or clan rights over land may be extinguished when such land is needed for particular community projects. However, the communal landholding system might have succeeded in those days simply because instances of conflict between private rights and public needs were relatively rare. Major state projects were probably infrequent and rarely required any particular piece of land.

The overriding emphasis placed on economic development in the post Independence African States naturally suggests that every social institution ought to be carefully examined to determine its probable effect on development. Thus, the urgent need on the part of contemporary African states to examine those aspects of the customary land tenure that play a major role in land use problems. This has led to many discussions and ideas on the obvious failure of most development policies and the need to explore more dynamic strategies of development which might help the public authorities to have access to land for the eventual installation of utilities and services. This will mitigate or even relieve entirely the worsening standard of living of the urban poor. Our discussion in chapter three points to the fact that, given the enormous land use problems and the existing confusion in the land market of many African states, the use of compulsory acquisition powers for the purposes of acquiring privately owned land in the interest of economic development is quite justified. We have however endeavoured to caution the authorities concerned to ensure that the procedure to be used in the exercise of compulsory acquisition power is that which protects the interests of the poor helpless dispossessed landowner. Of particular importance here is the clarity of the public purpose behind the exercise of such powers. The

low level of literacy in the developing countries necessarily requires widespread publicity of the particular purpose for which each acquisition is made. Control of administrative corruption and abuse of discretion could also be achieved by ensuring that compulsory acquisition laws make provisions for appellate bodies which the expropriated owner can resort to when dissatisfied with the public purpose or the procedure adopted in the exercise. However, we have not, in our discussion, overlooked the fact that, while providing appellate bodies to review cases of compulsory acquisition might prevent corruption and misuse of discretionary powers, it may threaten to prevent innovative uses of compulsory acquisition powers.

When a particular piece of land is required by a public authority for a genuine public purpose and all laid down procedures are followed all private rights and interests in that land are extinguished. At this point problems of public purpose and the procedure followed are of theoretical interest. The most immediate practical problem that surfaces is that of compensation in respect of the proprietary rights and interests extinguished. The simple assumption that compensation would be paid for any private property rights extinguished dates as far back as the pre-colonial African legal systems. Also it is a basic principle of the English Common Law that when there is an intervention by the state in the possession and use of privately owned property the dispossessed is entitled to compensation. It would appear that in both the advanced and the developing nations the major issue is that of sorting out and reconciling the short term individual interest of the land owner with the long term interest of the general public. This is why the rules and regulations that seek to reconcile these delicate and conflicting

interests must take many things into consideration. Having made this point, we suggest that speed, simplicity and fairness should be the most important requirements of any compulsory acquisition law in Africa as elsewhere in the world. Even though certain basic formalities are necessary to ensure the existence of genuine public purpose and the protection of the expropriated land owner, the speed with which the exercise is conducted may save human and material resources and can avoid delays in acquiring land for important development projects. Similarly, simple and straightforward rules of compulsory acquisition will not only facilitate easy application of the procedure but will also ensure clearer understanding of the acquisition procedure by both parties. Also, a fair compulsory acquisition legislation will defuse unnecessary tensions in matters of compensation and, at the end of the day, may leave both parties happy and satisfied with the whole exercise.

It is however important to reiterate that having access to land and sorting out all the thorny issues that surround the payment of compensation does not necessarily insure successful implementation of urban development projects. In other words, land acquisition by UDCs is only one step out of many to be taken in order to achieve the desired objectives in urban planning and development. That is to say, an urban development corporation may assemble land and pay all compensation due but still fail to perform its function effectively due to certain inherent weaknesses in its composition or as a result of certain defects in the legal, administrative or planning framework under which it operates. Taking the two case-studies in this work together we may recall some of these defects and the extent to which they have affected the smooth operation of both F.C.D.A. Abuja and C.D.A. Dodoma.

ADMINISTRATIVE FRAMEWORK

Although our case study on the F.C.D.A. reveals that it is a corporation whose creation was fully backed by a statute that analyses its powers, functions and the precise physical boundaries within which to operate, the law makers overlooked the social and political implications inherent in merging various communities into one administrative unit under the management of an urban development corporation. The reader may recall that the various ethnic units within the area that now constitutes the capital territory in Nigeria were formerly under separate political jurisdictions. This simply means that any attempt to bring these various communities with varying historical and cultural backgrounds under a single governmental authority (F.C.D.A) must first of all identify the existing authority patterns in the territory with the view to setting up adequate administrative machinery before declaring that area of land as a single politico-administrative entity (F.C.T.). It is only through the existence of such basic administrative framework that the urban development corporation can identify the welfare needs of the various communities in its area of jurisdiction and make appropriate plans for their future growth and development. We are of the view that the peculiar circumstances bringing various tribal groups in Nigeria into one political entity (F.C.T.) necessarily demands that a unified system of administration be introduced. However, some precautions are necessary or else the introduction of a unified system of administration in such an area might even exacerbate the already explosive political situation. Our suggestion in this case is for the authority concerned (F.C.D.A) to allow for the continuation of the existing administrative system, whereby State, Local and Emirate

Authorities would continue to have jurisdiction over and responsibility for their respective inhabitants living outside the priority area of the territory until the short-term plans of the government are ready for implementation by which time the F.C.D.A. would have found its feet in terms of the necessary finance and manpower required to introduce and implement a unified system of administration within the territory. The advantage of this, in our opinion, is that it allows for flexibility to make a smooth adaptation to future changes in government policy towards the territory. The only disadvantage here may be the apparent uncertainty which such an approach entails for the people and authorities of the affected area regarding the exact system of administration to be finally adopted. On the other hand, such an interim period will enable the government to win the confidence of the people by reassuring them that whatever system of administration is finally adopted, it will be that which will guarantee their welfare and the protection of their property. The government can establish a complementary administrative structure geared primarily towards the provision of social amenities within the territory.

The almost total absence of a sound legal framework and its consequences in Dodoma earlier discussed in chapter six clearly points to the fact that whether or not an urban development corporation succeeds in achieving its goals will depend to a considerable extent on the legal framework under which it operates. Its territorial jurisdiction as well as its relationship with similar authorities within and outside its area of operation are better legislated upon than merely stated as guidelines on paper. Equally vital, as the Dodoma case-study shows, is the involvement of lawyers right from the outset of any scheme of

urban development. Since the operation of urban development corporations necessarily involves issues as who does what, how is it to be done as well as the limit of such activities it is our suggestion that lawyers with appropriate skill and knowledge should always be part of both the initial policymaking process and the subsequent implementation exercise. This in our view, is the safest way of ensuring that major legal issues are sorted out and necessary decisions taken to remove all bottlenecks and establish a proper legal framework for the implementation of any urban development project. Failure to involve lawyers at the beginning of urban development scheme, as shown in the case of Dodoma, will lead to complicating issues and leaving many legal problems unresolved.

PLANNING FRAMEWORK

In addition to having access to land and having a sound legal and administrative framework an urban development corporation requires a positive planning framework in order to succeed in its operation. We have, for instance, attempted to show, in both chapters five and six, that the first set of planning problems that UDCs encounter are those connected with the area of land demarcated as the planning area. Our interview with Justice Aguda in chapter four shows an increasing awareness on the part of policy makers and physical planners on the need to demarcate a larger portion of land than actually needed initially as a planning area. This is because of future expansion and population demand. Once an area of land is demarcated as a planning area within the jurisdiction of an urban development corporation, any future move by the authority to expand that territory may run the risk of encountering many planning problems. We therefore suggest that, in

order to avoid such unnecessary problems and possible confrontation with land owners, the size of any territory to be declared a planning area should not be measured by the current need for land and infrastructural provisions but rather should be based on projected future urban needs.

Soon after an area of land has been demarcated as a planning area within the exclusive jurisdiction of an urban development corporation what follows next is the preparation of a Master Plan that will guide the UDC in question to execute a particular development scheme. Some of the development control provisions of the F.C.T. Decree earlier discussed in chapter five may have revealed the tendency on the part of UDCs to regard the Master Plan as a rule which must be strictly followed rather than as a simple guide in the process of urban planning and development. The inevitable result of such an approach, as shown in chapter five, is the emergence of comprehensive development plans that in most cases tend to introduce extreme development control measures, classify many areas as 'slums' and authorise demolition exercises that renders many urban poor homeless. It may be recalled that we have, in chapter five, described section 7(2) of the F.C.T. Decree No. 6 of 1976 of Nigeria as an extreme piece of development control legislation which is all out to frustrate the genuine efforts of private developers and in the long run kill all development initiatives. Our suggestion in this regard is that policy makers and law makers should come out with a planning framework which does not give promise of a planned utopia. Instead, it must be that which will consider development control in parallel with other differentials in public investment and general socio-economic status of the urban poor if an effective way of achieving balanced

development is to be found. A sound and realistic planning framework that can have any appreciable effect in the Third World countries, in our opinion, is only that which, in addition to minimising the spread of informal housing, provides other viable alternatives to the urban poor to build their huts legally on land for which they have legal tenure. The only plan that is capable of achieving this objective is that which is less rigid and which makes room for flexibilities and modifications whenever necessary.

The application of rigid and complicated building codes is yet another factor that undermines the foundation of any planning framework. As our discussion in chapters five and six show, attempts by development corporations to enforce high standard and rigid building rules and regulations tend to place greater emphasis on the cosmetic appearance of the physical structures than on the ability of such structures to provide the basic shelter requirements of the urban poor. This approach, in our view, negates the basic philosophy behind any programme of urban housing in the developing countries - which is a strategy to move gradually from a basic cheap to an improved house built with lasting materials. It is our considered opinion here that any planning framework of an urban development scheme should deemphasise the idea of high building standards and regulations because such rules and regulations only reflect the values and lifestyles of the privileged few without providing a realistic and affordable alternative to the majority of the low-income urban residents. What is needed here is a set of flexible and technically simple building rules that the average builder-occupier can understand and afford.

Apart from these basic inadequacies in the legal, administrative and planning framework of urban development corporations there are also certain inherent weaknesses relating to the composition, powers and functions of the corporations that serve as major constraints towards the achievement of optimum results by these corporations.

COMPOSITION, POWERS AND FUNCTIONS OF UDCs

The issue of the quality of membership of public corporations generally and UDCs in particular was highlighted in chapter four of this work. We have also attempted to show, in both the case study on Nigeria and that on Tanzania, that no specific qualification or special experience is required before anyone could be appointed to the board of C.D.A. or F.C.D.A. From the contents of the C.D.A. Establishment order and the F.C.T. Decree, it is clear that appointment to either board is almost entirely a matter of political party patronage. The appointment of a defeated member of the ruling party in Nigeria as a Minister and Chief Executive of the F.C.D.A. and the various revelations of partisanship within the authority highlighted in chapter four simply goes to show how ineffective the board of an urban development corporation can be due to its composition. Because such board members are politicians with very little or no sound academic background and with limited knowledge and experience of the day to day running of public corporations, they find it difficult to assimilate the information necessary to formulate major policies. In most cases such board members tend to get too involved with little political matters connected with day to day administration instead of playing their true role of laying down broad policies.

Another feature which remains common in both F.C.D.A. Abuja and C.D.A. Dodoma is the fact that professionals like the chief engineers, the chief town planners, the architects and the legal advisers are separate from the board members. This particular arrangement is, in our view, one of the major weaknesses of the urban development corporations in the developing countries.

The laws creating both the C.D.A. and the F.C.D.A. vest the head of the government (President in the case of Tanzania and the S.M.C. in the case of Nigeria) with the power to appoint the members or directors of the board. Ideally, the President should be free to appoint qualified men and women from wherever they may be found, including people who are neutral politically or even people from a rival political party. This is because the overall performance of the corporation depends largely on the quality and integrity of its members. Ideally, too, politicians should not be appointed. This is because, apart from the difficulty of resisting the temptation of regarding themselves as their constituency representatives, they are particularly subject to pressures which may lead them to advocate policies or make decisions that may not be in the interest of the corporation. In practice, however, the President lacks the freedom of selection which the law confers on him. He accepts the recommendation of his party, which is not necessarily based on the merit and integrity of individual appointees. The inevitable result of this approach is the emergence of incompetent and inefficient board of directors. The next question that may probe the mind of the reader is: what then should guide those responsible for appointing the directors of a public corporation?

Whatever approach one may suggest much will depend on the peculiar political circumstances of each developing country. Given the political atmosphere in most developing nations, it would be difficult to avoid political considerations in the choice of board members to public corporations. However, it is desirable that people to be chosen should be men of unquestionable integrity, with good general educational background, record of devotion to public service and a good reputation in the communities from which they are drawn. These people do not necessarily have to possess professional qualifications. This is because we believe that a lot can be done to supplement the inadequacies of the board members by empowering the board to incorporate some professionals from the management to the board as and when the need arises. The advice of a legal adviser or an engineer may prevent the board from making decisions that are based on purely political considerations. Also their tenure of office as board members should not be for an indefinite period. The law establishing the corporation should clearly state their terms of appointment, remuneration and the criteria for reappointment to a second term of office. Apart from ensuring efficiency this will provide the government with a basis for assessing individual performance on the board. Similarly, the occasional incorporation of professionals into the board will help minimize political interference with the day to day affairs of the corporation.

POLITICAL INTERFERENCE

It is the composition of the board members of public corporations in the developing countries that often facilitates political interference with the functions of such corporations as

clearly highlighted in chapter four. The political interference in the day to day affairs of the F.C.D.A. highlighted in chapter four is not peculiar to Nigeria.

The failure of the authorities in Tanzania to come out with a lasting solution to the problem of inter-agency conflicts and personality clashes in the Dodoma Planning area (discussed in chapter six) was largely due to the political undertone in such disputes. Not only was there political interference with the functions and powers of the C.D.A. by the government and the ruling party in Tanzania but also the board was formally required to supply progress reports of its activities to the party headquarters and to keep the party abreast of any development regarding the actual implementation of the Dodoma project. The supremacy of the ruling political party in the activities of the government and its various agencies was fully reflected in section 3(3) of the 1977 Tanzanian constitution. That particular section provides that:

All activity of the organs of state of the United Republic shall be conducted under the auspices of the party.

The constitutional provision above clearly shows the dominant role of the party in all governmental and quasi-governmental activities in Tanzania. It also goes to show that in the event of any inter-agency dispute the supremacy of each agency will undoubtedly depend more on its political clout in government and party circles than on the facts of the case. The reader may share our view here that such an arrangement can only encourage unhealthy rivalry and unnecessary squabbles between government agencies at the expense of meaningful development.

Apart from the lack of a competent and knowledgeable board of directors and the incessant political interference highlighted above another unhappy feature of most development corporations in the developing countries is overreliance on the central government as their main source of finance. Our discussion on the main body of this thesis shows, for instance, how the F.C.D.A. in Nigeria has been made to rely solely on the Federal government as its sole financier. Given the present day financial constraints on the part of the developing nations, the development corporations should be empowered by their enabling statutes to explore other sources of generating revenue in addition to whatever grants or subsidy they receive from the central government. Although most development corporations are not primarily profit-making organisations, it is our view that, they are capable of generating surpluses which will supplement their annual grants and make them more capable of fostering economic and social progress. It is however important to emphasise here that whatever mandate is given to the corporations to generate revenue internally must be accompanied by legal provisions stressing the need for financial accountability. Failure to do that may create a loophole whereby most of the revenue collected finds its way into the wrong hands.

The unfortunate case of fraud in the F.C.D.A. highlighted in chapter five shows clearly how easy it is for officials of public corporations to exploit the loopholes of financial provisions and defraud the corporations. Our suggestion here is that in all cases legislation should be made which require information flows regarding financial matters. Such legislation must be precise in terms of the exact information required, its frequency and the regularity of its transmission. Of particular importance here is the legal provision

for annual audit report. The audit report of the F.C.D.A. for the years 1976-1979 (reproduced in chapter four) shows how inadequate such reports are. We strongly suggest that, audit reports of urban development corporations should always reflect how far those corporations have gone in achieving some of the social and economic goals for which they are created for the year under review. Failure to do that can only create loopholes for perpetuating inefficiency, waste and corruption as reflected in our case-study on the F.C.D.A.

The foregoing discussions represent a brief summary of some of the major issues raised in the main body of this work. They also reflect the impact being made by urban development corporations globally. These two case-studies have shown that the role of UDCs goes beyond the provision of modern physical structures. These corporations can go much further to mobilize and use scarce resources, create employment opportunities and improve overall urban administration. Our conclusion however is that as socio-economic institutions, the UDCs can only achieve these and other laudable goals if they are given basic legal and administrative framework and if they are allowed to function freely without unnecessary political interference with their power and mode of operation. It must also be added that the emergence of UDCs should not be seen as a substitute for the urban local authorities. In other words, their existence would not in any way affect the capability of the urban local authorities to continue to administer and manage their areas in accordance with their constituent statutes. In fact, since UDCs are essentially meant to organize and stimulate urban development, such a goal could best be achieved in cooperation, and not in conflict, with local authorities and other agencies within their areas of operation.

It must however be admitted, as shown in our two case studies, that the relationship between the UDCs on the one hand and local authorities and other agencies on the other has not always been harmonious. As earlier indicated, one of the ways of ensuring harmony and peaceful co-existence is by involving lawyers in decision making at the beginning and in the course of implementing any programme of urban planning and development. We may now conclude by re-examining some of the theoretical issues raised in chapter one and analysing how such theories of law were reflected in our two case studies.

CONCLUSION

In the opening chapter of this work we raised and discussed some of the theories that have emerged in the studies of law and development. The reader may have noticed that we only pointed out some of the similarities and differences in these theories without completely accepting one theory and totally rejecting another. This is because, it is not within the scope of this study to buy wholesale the ideas of any legal theorist nor to denounce completely the expositions of others. On the contrary, we believe that it is only by testing these various theories rationally that we can appreciate their real utility or otherwise in the case studies that were to follow. Even though individually each theory may be susceptible to be faulted on one ground or the other, collectively they depict the concept of law, its powers and limits as an instrument of inducing social, economic and political development in both the advanced and the developing nations. Thus, there is some amount of truth in each of the theories of law highlighted and a proper understanding of each theory is needed to help us understand the enormous socio-economic and political

problems of our contemporary world and to be better equipped in seeking possible solutions.

In an attempt to examine these theories we started from various concepts of law. Our emphasis was on law as an instrument of achieving rapid economic development, or a tool for maintaining law and order and/or as an instrument being used by one class to suppress another and maintain the status quo. One theme however remains consistent and runs through the whole of chapter one. That is, the need for 'decolonizing' the law in Africa - shedding those features imported from the legal system of a former colonial power which are of little utility in the African state. Thus, we share the views of Seidman in disagreeing with the liberal legalists' approach to the theory of law and development. Their theory strongly emphasises the instrumental relationship between development goals, specific legal rules and ensures that all rules enacted are those that seek to achieve social goals. Seidman's main point of disagreement with the liberal legalism is that, even though great institutions of Western democracy, the rule of law, the separation of powers and fundamental freedoms worked in the West, they did not and could not function in the same way on the continent of Africa. Thus any attempt to export certain 'great' ideas and legal rules and utilize them in Africa would not achieve the desired goal. In fact, Seidman is of the view that, most of the Western ideas and legal rules that were exported to Africa and transplanted only brought stagnation instead of achieving development. His theory of non-transferability of law emphasises the fact that some rules of law in different places and different times cannot induce the same behaviour as they did in their time and place of origin.⁽¹⁸⁾ Hence the need to decolonize the legal rules in Africa.

However, our discussions in subsequent chapters and the practical problems highlighted in our two major case-studies have prompted us to reach the conclusion that, if law is to induce the rapid economic development so badly needed in Africa, more than legal decolonization is needed. It is the opinion of this writer that issues such as what types of laws should be enacted to ensure programme implementation and what methods of approach are desirable are all secondary to the fundamental issue of the mental attitudes of the elite ruling class in Africa. Here again our views agree with those of Seidman where he pointed out that for any legal order to induce development in Africa there is the need on the part of the political elite to have an ideology that instructs them to use the legal order to change institutions.⁽¹⁹⁾ Brun-Otto Bryde however argues that the political elite in Africa are not likely to enact laws that are designed to bring fundamental change in their societies.⁽²⁰⁾ His theory is based on what he calls the conflict between development goals and the interests of those elites in power. He further consolidates his argument by pointing out that the law-makers who may intend to effect change in the legal order must expect opposition from the elites of which the law-makers are themselves a part. Bryde's argument here may be valid to the extent that the law-makers are invariably the members of the legislature, the judges, the academic lawyers and the bureaucrats, and these form the cream of the society with definite interest and obvious desire to protect those interests.

We are, however, of the opinion that the strengths of the above argument presented by Bryde do not in any way invalidate the points made by Seidman on the need on the part of the elites to have an

ideology that instructs them to use the legal order to change institutions. Similarly, Bryde's arguments do not change our earlier stance that the primary point of consideration in assessing the role of law as a development accelerator is the mental attitudes of our elite ruling class. If anything, they go to reenforce our belief that the mental attitudes of the elites is the most important ingredient to effective administration and meaningful development. Law is the most cogent tool for achieving this goal. It therefore follows that, no matter how indigenous a legal system may be it will remain ineffective as a tool for development if it is at the disposal of an inept and conscienceless ruling class.

Considering the broadness of the term development, we attempted in the later chapters of this work to narrow our discussion to the main scope of this thesis - law and administration in urban development - and discuss the dynamics of law in relation to urban planning and development. The emphasis in chapter three, for instance, was on identifying the relationship between land tenure and urban planning and development. Hence the rules governing the allocation and use of land. The rights of the family, the clan or tribe in land occupied by a group member or his family were examined both from the point of view of the traditional African society and the contemporary modern states whose main objective is to channel human and material resources into productive activities conducive to economic growth. There can be no doubt that the issues highlighted in this particular chapter reflect the importance of land tenure in urban planning and development. The most interesting lesson that chapter tends to impart is that, if law is to be used in transforming the

traditional African society into an economically viable and socially improved society, it must play a dynamic role in creating new values and new institutions. Perhaps no point supports this assertion better than the conflicts between private rights and public needs arising from the concept of land ownership under the traditional land tenure system. So long as such conflicts exist, the land tenure system cannot be expected to induce fully the economic development needed in Africa. The application of compulsory acquisition powers by the governments and their agencies and the increasing pressure on them to adopt more and more innovative use of the 'public purpose' as discussed in chapter three is a pointer to the fact that, given the right atmosphere, law can be the embodiment of new norms and the creator of new institutional arrangements.

The enactment of the Freehold Title (Conversion and Government Leases) Act by Tanzania in 1963 was not only a rejection of capitalism but also what one may term as a rejection of the export version of liberal legalism. The introduction of a statute of this nature seeking to establish a humanist society by a developing country confirms not only the instrumental role of law in economic development but also goes to contradict the theory of Bryde that the elites in Africa are not capable of passing any law or formulating any policy that can induce development. Another area of particular relevance in our case study on Tanzania in chapter six is the process of preparation and the implementation of the Dodoma Master Plan. The fact that the Master Plan was placed before members of the public for their comments and criticisms before it was finally adopted shows

that the authorities in Tanzania have openly demonstrated the principles of participatory democracy. Thus, Tanzania has realised, in tune with the contentions made by Seidman, that development plans can only be effective if the broad mass of the population are involved not only in the formulation but also in the implementation of the plans. It can therefore be said that in theory the Tanzanian authorities are seeking to institute a participatory legal order and not to continue with the colonial authoritarian legal order. It is however a different issue whether there is full adherence to all the conditions that Seidman set for an effective developmentalist legal order. The question that may arise is whether in practice the C.D.A. and the government in Tanzania really intend that the new capital be planned and developed in accordance with the principles of participatory democracy. As far as Tanzania is concerned, we are of the view that the participatory legal order being instituted is not merely symbolic in the sense used by Bryde but rather it is that which is instituted with a view to building a just and humanist society with equal opportunity to all.

On turning our attention to the case study on F.C.D.A. Nigeria, we are presented with a different picture. Even though the Land Use Decree of 1978 in Nigeria was said to have been enacted to facilitate development and alleviate the hardships of both the public and private developers, the numerous loopholes of that Decree, as discussed in chapter five, simply buttress Bryde's theory that, since it is the elites that control both economic and political power, all laws and policies that constitute a threat to their vested interests will not be effective.

Section 2 of the Land Use Decree, for instance, makes the Land Use and Allocation Committee the 'all powerful' body in matters of land allocation, who gets compensation and what amount is paid as compensation. But unfortunately, as our discussion in chapter five has shown, the membership of this committee is almost always made up of either members of the elite ruling class or their stooges. This simply confirms the Marxist theory of law. According to this theory of law, most of the statutes enacted, particularly in the capitalist society, express the will of the ruling class. According to Marx, this will is always dependent upon the interests of the ruling class which are dictated by their involvement in the means of production. Perhaps no individual section of the LUD is more inimical to the interests of the common man than section 47(2). That section provides:

No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Decree.

By virtue of the above provision the decision of the Land Use and Allocation Committee is final in all cases of land transaction. This clearly shows that the Decree is all out to favour the rich and powerful who have access to this very important Committee. The ordinary urban poor are left in a very weak position. They have neither adequate representation in nor access to the Land Use and Allocation Committee. Also they are forced by S. 47(2) of the LUD to accept whatever decision is made by the Committee.

Apart from the numerous loopholes of the Land Use Decree earlier mentioned in chapter five, our conclusion is that while the land law and official government policies adopted in Tanzania have the potential for achieving the desired goal, the statutes and official government policies in Nigeria are less likely to achieve the optimum results. This is because, we believe that, for the land law to do that, it must be accompanied by other positive government policies that will ensure the existence of adequate institutions to support the ordinary man seeking to undertake development project. There is, for instance, a mixture of positive land tenure system and viable institutions like the Tanzania Housing Bank and the Workers and Farmers Housing Development Fund. Failure on the part of Nigerian authorities, and indeed many other developing countries, to formulate policies that will ensure the existence of such financial institutions will only maximise the hardships of the poor masses and contribute to the failure of the law to induce development.

This on-going exploitation of the masses by the few privileged elites in the Third world is partially as a result of the submissive behaviour and in some cases, almost total ignorance of the poor who are in the majority. So long as the members of the establishment are in full control of economic and political power, their interests will dictate that they should continue to dominate, and so long as this domination continues, the poor will remain helpless and submissive. It therefore follows that, under these circumstances, it is difficult to have any law that will lead to real development. The questions that may come to mind here is, for how long will this domination continue; what is the solution to this problem? To our mind, the solution to this problem lies in the continuing struggle by the poor to

participate in the process of decision making. But again given the ignorance of the poor, as indicated above how can they struggle? This is where the lawyers' role is vital. By lawyers here we are referring to those lawyers with appropriate skill and knowledge. It may be recalled that we have, in chapter one, emphasised the need on the part of our law schools in the Third world countries to see law as a multi-faceted subject drawing on a wide range of other disciplines and related to many developmental issues. In other words, law students in developing nations should always benefit from a unique legal education - that which places great importance on both the art of acquiring legal knowledge and that of skills training and development. The law school programmes which lead to a law degree in many of our universities have objectives that are stated in terms too general to be of practical value to the lawyer in participating in different kinds of activities to enhance the development of his society. Thus, when the necessary steps are taken to restructure the legal education from general goals to particular strategies, not only will the lawyers show interest in the socio-economic problems of their society but most importantly they are likely to take the lead in influencing change and awakening the less informed members about the need for change and social improvement. The area of civic education, for example, may be seen as the responsibility of central or regional government. But the simple truth is that very few governments in Africa, if any, take the pains to ensure that the urban poor and the uninformed rural communities are fully educated on the political social and economic affairs of their society. Even the laws that are daily passed by various legislative houses are not publicised wide enough for the ordinary citizen to know where his rights end and responsibilities

start. Not only will civic education make the forces of the poor stronger but also it will ensure their participation in the process of policy formulation and implementation. Through this participation, not only will the evils of the penetration of capitalism be checked but also those of the impossibility of the existing establishment to pass law for real development be reduced.

It must however be pointed out here that, we are not under any illusion that the dominating members of the establishment will suddenly be charitable and allow the participation of the poor in the process of decision making, but we are optimistic that gradual progress is possible especially when the poor become more politically aware and take up the challenge of the struggle themselves. This is an acceptance of one of the suggestions in the underdevelopment theory that economic development is part of the general struggle against dependence and political domination. We may also add that in the face of the dominating position of the members of the establishment in any particular country and their international 'friends' the struggle should be gradual and one that is not only part of natural social change, but also directs that social change. Our suggestion here stems from some of the practical issues highlighted in our two case-studies. It appears that, the mechanisms of capitalism, imperialism and neo-colonialism being used to place the Third World countries in a perpetual position of dependency are so strong that the trend is set to continue for some time to come.

Taking the Master Plan for Dodoma and that of Abuja as our practical example, we can see that both were prepared by International Planning bodies. Also in both countries there is the question of depending too much on the Western trained professional planners,

developers, consultants and legal advisers when it comes to the actual implementation of the project. Such dependence on foreign experts in Tanzania, for instance, is inconsistent with the declared determination of the leadership to formulate and implement development policies based on the principles of self reliance. Thus, there is a clear contradiction between the theoretical provision in the Dodoma Master Plan for the maximum possible exploitation of locally produced building materials and the simple techniques for which Tanzania has the funds and expertise, on the one hand, and the participation of expatriate planners, consultants and advisers who are carrying considerable responsibilities for policy, planning, finance and development in Dodoma, on the other. This point of observation clearly contradicts the optimism shown by Seidman in the use of participatory legal order and goes to consolidate the ultimate stance taken by the dependency theory that the rules of law and government policies in most Third World countries tend to enhance under development and perpetuate the dependence of those countries on the more advanced nations of the West. Despite the zeal and determination of the Tanzanian leadership, "its definition of socialism is still to an astonishing extent in the hands of expatriates".⁽²¹⁾ This further reiterates our earlier stance that what is needed in Africa is more than merely 'decolonization' of the legal rules. In order to enhance development and avoid perpetual dependence, apart from reforming the legal system, African governments should undertake a scheme of mass training of planners, engineers, lawyers, architects and various professionals who are citizens of these countries. Such training can be 'decolonized' by ensuring that the socio-economic needs and local realities of these countries are reflected in the

theoretical and practical course contents of each profession. This will, in the long run, bring to an end the present reliance on foreign experts and advisers and reduce the possibility of what the dependency theory describes as collaboration between the Third world elites and International elites'.

Though we have indicated earlier that it was difficult to accept or reject any particular theory at the early stage of this work, having tested their similarities and differences, it may be necessary to make our stance much clearer. First of all, we agree with the views expressed by Seidman that, the first task in any attempt to understand the relationship between law and development should be to understand why people behave in the ways they do when faced with a particular norm (legal rule). As earlier explained, the majority of the population in the Third World are uninformed and the laws being passed by the Parliament are not fully communicated to the people. When we start from identifying why the people react the way they do when faced with legal rules, this will then lead us to an understanding of why in Africa the political and economic ruling class are linked and why they are unable to formulate policies that will lead to meaningful development. This is where Seidman's advocacy of a public participatory legal order can serve as one of the possible solutions.

With due respect, we disagree with Bryde's conclusion that it is impossible in Africa to expect the elites to use law to induce development. Bryde's main argument is that the lawyers themselves are a part of the elite that benefits from the existing order and as such can never have an ideology of change. Our own conclusion is that, it is possible for law to induce development in Africa. What is needed

is not an imported set of rules that reflect Western values and lifestyle, but an indigenous African law which emphasises the particular needs and local realities of each nation. As earlier indicated, there is an urgent need for reforming the legal training in the Third world countries. When the lawyers' training emphasises the developmental role of law and the need for lawyers to participate fully in the process of social and economic development, we shall gradually have lawyers who will ensure the emergence of a participatory legal order.

Also, while we agree with the point made by the dependency and underdevelopment theory that, long after independence in Africa the colonial forms of law and state continue to exist to the advantage of the emerging national bourgeoisie and Western economies, we do not agree that there will be a perpetual state of dependency. This trend may, as our case studies show, go on for some time, but with mass training of professionals in these countries there will be less dependence on foreign experts. Similarly, given the right kind of legal training, lawyers and other professionals would ensure the emergence of a participatory legal order breaking the chain of dependence on the Western economies.

The preceding paragraphs summarise our understanding of the general relationship between law and development. They also represent, in particular, our perception of major theoretical and practical issues surrounding law and administration in urban development especially as they relate to the role of urban development corporations in general and Capital Development Authorities in particular. Our conclusions in this work is that law has a role in major programmes of urban development, but one should not exaggerate

the role of law. On the other hand, one has to appreciate that there is a fairly wide range of issues that will benefit from the application of law and legal skill. One is not saying that once you get the law everything will go right, but we are saying that if you get the law wrong other things will begin to go wrong. So law is needed at the beginning and during the course of the administration of urban development and lawyers with appropriate skill and knowledge can make an important contribution to efficient urban administration. It is hoped that this thesis is a contribution to that end.

CHAPTER SEVEN - NOTES AND REFERENCES

1. See Josef Gugler and William G. Flanagan, "Urbanization and Social Change in West Africa" op.cit. p.27.
2. Sayers, G.F., The Handbook of Tanganyika, Macmillan and Co. Ltd., 1930, pp52-60.
3. See Footnote No. 22 of Chapter 2.
4. See Footnote No. 17 of Chapter 4.
5. See A.M. Hayuma, "Dodoma: The Planning and Building of the new capital city of Tanzania" Habitat International, Vol. 5, No.5/6 1980 p.673.
6. O.H.K. Spate, "Two Federal Capitals: New Delhi and Canberra", Geographical Outlook, Vol. 1, 1956, P.1.
7. See Footnote No. 26 of Chapter 6.
8. C.J. Maruma, New Towns in Britain: The Legal and Administrative aspects of their organisation and management, L.L.M. Thesis op.cit. p.169.
9. See Footnote No. 19 of Chapter 6.
10. See The F.C.T. Decree No. 6 of 1976 op.cit.
11. See Ibid. SS3 and 5.
12. This committee was made up of mostly party loyalists and no lawyer was included.
13. See Footnote No. 72 of Chapter 4.
14. See Footnote No. 20 of Chapter 4.
15. See Reports and Findings of the Aguda Panel, Dated December, 1975, p.57 Paragraph 7.3.
16. See F.C.D.A. 3rd Annual Report and Accounts 1978/79 op.cit. p.2.
17. See Footnote No. 78 of Chapter 1.

- 18 See Footnote No. 79 of Chapter 1.
19. See Footnote No. 76 of Chapter 1.
20. See Footnote No. 84 of Chapter 1.
21. See The Guardian, 18th October 1972.

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FEDERAL CAPITAL TERRITORY DECREE 1976



ARRANGEMENT OF SECTIONS

Section

- | | |
|--|---|
| 1. Creation of Federal Capital Territory for Nigeria. | 9. Offences and penalty therefor. |
| 2. Boundaries to be better defined. | 10. Offences by bodies corporate. |
| 3. Establishment of Federal Capital Development Authority. | 11. Accounts and audit. |
| 4. Functions and powers of the Authority. | 12. Annual reports to Supreme Military Council. |
| 5. Executive Secretary and other staff of the Authority. | 13. Transitional provisions as to administration of laws. |
| 6. Compensation payable. | 14. Regulations. |
| 7. Development without Authority's approval prohibited. | 15. Interpretation. |
| 8. Power to enter premises and obtain information. | 16. Citation. |

SCHEDULE

Decree No. 6

[4th February 1976]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) There is hereby established a capital territory in and for the Federal Republic of Nigeria to be designated as the Federal Capital Territory.

(2) The Capital Territory shall consist of the area described in the Schedule to this Decree.

(3) The area contained in the Capital Territory shall, as from the commencement of this Decree, cease to be a portion of the state concerned and shall thenceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Capital Territory shall likewise vest absolutely in the Government of the Federation.

Creation of
Federal
Capital
Territory
for Nigeria.

Boundaries
to be better
defined.

2.—(1) The boundaries of the Capital Territory shall be accurately surveyed and demarcated as soon as may be after the commencement of this Decree by or on behalf of the Federal Capital Development Authority and such boundaries shall correspond as closely as possible in detail to the boundaries of the area described in the aforementioned Schedule.

(2) The Head of the Federal Military Government shall by order published in the Gazette define the boundaries of the Capital Territory by reference to the limits, distances and bearings demarcated by the Authority which shall have carried out or caused to be carried out the survey referred to in subsection (1) above, and forthwith thereafter, references in this Decree to the area described in the Schedule thereto shall be construed as references to the area defined in the order.

Establish-
ment of
Federal
Capital
Develop-
ment
Authority.

3.—(1) There shall be established an authority to be known as the Federal Capital Development Authority which shall consist of a Chairman and eight other members to be appointed by the Supreme Military Council.

(2) The Authority shall be a body corporate with perpetual succession and a common seal.

Functions
and powers
of the
Authority.

4.—(1) Subject to and in accordance with this Decree, the Authority shall be charged with the responsibility for—

(a) the choice of site for the location of the Capital city within the Capital Territory ;

(b) the preparation of a master-plan for the Capital city and of land use with respect to town and country planning within the rest of the Capital Territory ;

(c) the provision of municipal services within the Capital Territory ;

(d) the establishment of infrastructural services in accordance with the master-plan referred to above ; and

(e) the co-ordination of the activities of all ministries, departments and agencies of the Government of the Federation within the Capital Territory.

(2) Subject to the other provisions of this Decree, the Authority shall have power to do anything which in its opinion is calculated to facilitate the carrying on of its activities including, without prejudice to the generality of the foregoing, power—

(a) to sue and be sued in its corporate name ;

(b) to hold and manage movable and immovable property ;

(c) to construct and maintain such roads, railways, sidings, tramways, bridges, reservoirs, water courses, buildings, plant and machinery and such other works as may be necessary for, or conducive to, the discharge of its functions under this Decree ;

(d) to purchase or otherwise acquire or take over any asset, business, property, privilege, contract, right, obligation and liability of any person or body (whether corporate or unincorporate) in furtherance of its activities ;

(e) to enter into contracts or partnerships with any person or body (whether corporate or unincorporate) which in the opinion of the Authority will facilitate the discharge of its functions under this Decree ;

(f) to train managerial and technical staff for the purpose of the discharge of functions conferred on it by or in pursuance of this Decree ;

Boundaries
to be better
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2.—(1) The boundaries of the Capital Territory shall be accurately surveyed and demarcated as soon as may be after the commencement of this Decree by or on behalf of the Federal Capital Development Authority and such boundaries shall correspond as closely as possible in detail to the boundaries of the area described in the aforementioned Schedule.

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(c) the provision of municipal services within the Capital Territory ;

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(b) to hold and manage movable and immovable property ;

(c) to construct and maintain such roads, railways, sidings, tramways, bridges, reservoirs, water courses, buildings, plant and machinery and such other works as may be necessary for, or conducive to, the discharge of its functions under this Decree ;

(d) to purchase or otherwise acquire or take over any asset, business, property, privilege, contract, right, obligation and liability of any person or body (whether corporate or unincorporate) in furtherance of its activities ;

(e) to enter into contracts or partnerships with any person or body (whether corporate or unincorporate) which in the opinion of the Authority will facilitate the discharge of its functions under this Decree ;

(f) to train managerial and technical staff for the purpose of the discharge of functions conferred on it by or in pursuance of this Decree ;

(g) to undertake such research as may be necessary for the performance of its functions under this Decree ;

(h) to exercise such other powers as are necessary or expedient for giving full effect to the provisions of this Decree.

(3) Except with the general or special approval of the Head of the Federal Military Government and as otherwise prescribed by this Decree, the Authority shall not have power to borrow money or to dispose of any property.

5.—(1) There shall be appointed by the Supreme Military Council an Executive Secretary to the Authority who shall be the chief executive officer of the Authority and shall be responsible for the day to day running of the affairs of the Authority.

Executive
Secretary
and other
staff of the
Authority.

(2) The Executive Secretary shall hold office on such terms as to emoluments and otherwise as may be specified in his instrument of appointment.

(3) The Authority may appoint such other persons to be officers and servants of the Authority as it may deem fit.

(4) The remuneration and tenure of office of the officers (other than the Executive Secretary) and servants of the Authority shall be determined by the Authority after consultation with the Federal Commissioner for Establishments.

6.—(1) Notwithstanding anything to the contrary in the Constitution of the Federation or of a state or of any other enactment or of any rule of law, compensation payable in respect of any land comprised in the Capital Territory shall be assessed and computed in accordance with the provisions of this Decree.

Compensa-
tion payable.

(2) In computing compensation payable under this Decree, account shall be taken of any building or crops on the land acquired for the purpose of this Decree, so however that any compensation payable shall be, as respects—

(a) land affected by this Decree, for an amount equal to the total rent paid by the lessee over the period between the date of the execution of the lease and the date of its determination by the Authority together with interest at the bank rate between the last-mentioned date and the date of payment of compensation ;

(b) building on such land, for the amount of the actual cost of construction of the building (less any depreciation) together with interest at the bank rate over the period between the date of the acquisition of such building and the date of payment of compensation ;

(c) crops on such land, for an amount equal to the fair market value of such crops ;

and the cost mentioned in the foregoing provisions of this subsection shall be such as may be determined by the Authority.

(3) Any person who claims any right or interest in any land comprised in the Capital Territory shall submit in writing particulars of his claims to the Executive Secretary on or before the expiration of a period of twelve months from the date of commencement of the order made under section 2 of this Decree or such longer period as the Head of the Federal Military Government may, either generally or in relation to any particular claim or claims, provide by notice published in the Gazette.

(4) No claim for compensation shall be entertained by the Authority unless a written notice of the claim in accordance with subsection (3) above is served on the Authority within the period specified in the said subsection.

Develop-
ment
without
Authority's
approval
prohibited.

7.—(1) As from the commencement of this Decree, no person or body shall within the Capital Territory carry out any development within the meaning of this Decree unless the written approval of the Authority has been obtained by such person or body :

Provided that the Authority may make a general order with respect to the interim development of land within the Capital Territory and may make special orders with respect to the interim development of any portion of land within any particular area.

(2) The Authority shall have power to require every person who, otherwise than in pursuance of an approval granted or order made under subsection (1) above, proceeds with or does any work within the Capital Territory to remove any work performed and reinstate the land or, where applicable, the building in the condition in which it was before the commencement of such work, and in the event of any failure on the part of any such person to comply with any such requirement, the Authority shall cause the necessary work to be carried out, and may recover the expenses thereof from such person as a debt.

(3) In this section—

"development" means the carrying out of any building, engineering, mining or other operations in, on, over or under land or water, or the making of any material change in the use of any land or buildings thereon or of any stretch of water whatsoever ;

"interim development" means such temporary development as may be authorised by the Authority of any land comprised in the Capital Territory between the date of commencement of this Decree and the coming into operation of any of the Authority's schemes of development for the particular portion of land.

Power to
enter
premises
and obtain
informa-
tion.

8.—(1) For the purpose of the efficient discharge of the responsibilities of the Authority under this Decree, the Executive Secretary or any other officer or servant of the Authority authorised in that behalf—

(a) shall have a right of access at all times to any land or building within the Capital Territory for the purpose of ascertaining that the provisions of this Decree are not being contravened ;

(b) may issue a notice calling upon any person whom he has reason to believe is able to give any information respecting the ownership, possession or the boundaries of land within the Capital Territory or any part thereof, or in whose possession or power any document relating to any such matter is alleged to be, to attend before him and give such information or produce such document on a date and at a place mentioned in the notice ;

(c) may, by notice in writing served on any person carrying on an industrial, commercial, educational or any other undertaking whatsoever, require that person to furnish in such form as he may direct information on such matters as may be specified by him.

(2) Any person required to furnish information pursuant to subsection (1) above shall within one month from the date of the notice comply with the notice.

9.—(1) If any person required to furnish information pursuant to section 8 of this Decree fails to furnish the information as required under this Decree, he shall be guilty of an offence.

Offences
and penalty
therefor.

(2) If a person in purported compliance with a requirement to furnish information as aforesaid knowingly or recklessly makes any statement in the return which is false in a material particular, he shall be guilty of an offence.

(3) Any person who wilfully obstructs, interferes with, assaults or resists any officer or servant of the Authority in the execution of his duty under this Decree or who aids, incites, induces or abets any other person so to do, shall be guilty of an offence.

(4) Any person found guilty of an offence under this Decree shall be liable on conviction to a fine of ₦500 or to imprisonment for six months or to both such fine and imprisonment.

10. Where an offence under this Decree which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other official of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by
bodies
corporate

11.—(1) The Authority shall keep proper accounts and proper records in relation thereto and shall prepare in respect of each financial year a statement of accounts in such form as it may direct.

Accounts
and audit.

(2) The Authority shall as soon as may be after the end of the financial year to which the accounts relate cause its accounts to be audited by auditors approved by the Federal Commissioner for Finance.

(3) The auditors shall on completion of the audit of the accounts of the Authority for each financial year prepare and submit to the Authority the following two reports, that is to say—

(a) a general report setting out the observations and recommendations of the auditors on the financial affairs of the Authority generally for that year and on any important matters which the auditors may consider necessary to bring to the notice of the Authority ; and

(b) a detailed report containing the observations and recommendations of the auditors in detail on all aspects of the operations of the Authority for that year.

12. The Authority shall prepare and submit to the Supreme Military Council not later than 30th June in each financial year a report in such form as the Supreme Military Council may direct on the activities of the Authority during the immediately preceding financial year, and shall include in the report a copy of the audited accounts of the Authority for that year and of the reports mentioned in section 11 (3) of this Decree.

Annual
reports to
Supreme
Military
Council.

13. It is hereby declared that all laws applicable in the Capital Territory immediately before the commencement of this Decree shall continue to apply in the Capital Territory and all persons or authorities concerned with the administration of such laws shall continue to administer them until other provision is made in that behalf by the Government of the Federation.

Transi-
tional provi-
sions as to
administra-
tion of
laws.

14. The Head of the Federal Military Government may make regulations generally for carrying into effect the provisions of this Decree.

Regula-
tions

APPENDIX B

FEDERAL CAPITAL DEVELOPMENT AUTHORITY
ABUJA, NIGERIA

CONSTRUCTION AGREEMENT

BETWEEN

THE FEDERAL CAPITAL
DEVELOPMENT AUTHORITY
OF ABUJA, NIGERIA

AND

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.....
.....
.....

Interpretation.

15. In this Decree, unless the context otherwise requires—

“the Authority” means the Federal Capital Development Authority established by section 3 of this Decree ;

“building” includes any structure whatsoever on land ;

“Capital Territory” means the Federal Capital Territory as described in sections 1 and 2 of this Decree.

Citation.

16. This Decree may be cited as the Federal Capital Territory Decree 1976.

SCHEDULE

THE BOUNDARIES OF THE FEDERAL CAPITAL TERRITORY SHALL (SUBJECT TO SECTION 2) BE AS FOLLOWS, THAT IS :—

Starting from the village called Izom on 7° E Longitude and 9° 15' Latitude, project a straight line westwards to a point just north of Lehu on the Kemi River ; then project a line along 6° 47½' E southwards passing close to the villages called Semasu, Zui and Bassa down to a place a little west of Ebagi in Kwara State ; thence project a line along parallel 8° 27½' N Latitude to Ahinza village 7° 6' E (on the Kanama River) ; thence project a straight line to Buga village on 8° 30' N Latitude and 7° 20' E Longitude ; thence draw a line northwards joining the villages of Odu, Karshi and Karu. From Karu the line should proceed along the boundary between the North-West and Benue-Plateau States as far as Karu ; thence the line should proceed along the boundary between North-Central and North-Western States up to a point just north of Bwari village ; thence the line goes straight to Zuba village and thence straight to Izom.

MADE at Lagos this 4th day of February 1976.

GENERAL M. R. MUHAMMED,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purpose)

The Decree establishes for Nigeria a Federal Capital Territory comprising the area described in the Schedule to the Decree and provides for the constitution of a Federal Capital Development Authority which is to exercise the various powers set out in the Decree among which are the choice of the site of the location of the Capital City within the Capital Territory and the preparation of a master-plan for the Capital City and of land use with respect to town and country planning within the rest of the Federal Capital Territory.

APPENDIX B

FEDERAL CAPITAL DEVELOPMENT AUTHORITY
ABUJA, NIGERIA

CONSTRUCTION AGREEMENT

BETWEEN

THE FEDERAL CAPITAL
DEVELOPMENT AUTHORITY
OF ABUJA, NIGERIA

AND

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.....
.....
.....

1

CONSTRUCTION AGREEMENT AT THE NEW FEDERAL CAPITAL ABUJA

THIS AGREEMENT made the day of 19.....
BETWEEN the Federal Capital Development Authority of Abuja NIGERIA (Hereinafter
called the "EMPLOYER") on the one part, and

.....
Hereafter called the "CONTRACTOR") on the other part, WHEREAS the EMPLOYER
intends to proceed with

.....
(Hereinafter called "the WORKS") and has caused Drawings; Specification and Bills of
Quantities showing and describing "the WORKS" to be done to be prepared under his dire-
ction or that of his authorised representative;

AND-WHEREAS "the CONTRACTOR" has submitted his Quotations for the said
WORKS which was accepted by "the EMPLOYER";

NOW THEREFORE it is hereby agreed as follows:—

1.00 APPOINTMENT

The EMPLOYER hereby appoints "the CONTRACTOR" and the CONTRACTOR
accepts the appointment subject to the terms and conditions hereinafter set forth.

2.00 SCOPE OF WORK

2.01 The CONTRACTOR shall undertake the.

2.02 The CONTRACTOR hereby agreed to execute the said WORKS in accordance with
the Drawings, Specification, the Bills of Quantities, and the tender documents
shown in Appendixes 1-4

3.00 REMUNERATIONS

For the performance of the WORKS under Clause 2 hereof, and in Appendixes 1-4
thereto, the CONTRACTOR shall be paid the sum of ₦:K
(.....)

4.00 METHOD OF PAYMENT

4.01 Payment to the CONTRACTOR shall be in Naira and shall be by instalment as
detailed in Appendix and on submission of a Variation Certificate by
the EMPLOYER.

4.02 If the progress of the WORKS according to the Progress Report in the opinion of the
EMPLOYER falls behind schedule, the CONTRACTOR shall be so informed in

writing thereafter payment for the following months can be reduced accordingly.

5.00 ADDITIONAL SERVICES

Should the CONTRACTOR be requested to undertake additional services necessary for the due performance of the WORKS, such services shall be undertaken on such terms and conditions as may be agreed in writing between the parties hereto.

6.00 COMMENCEMENT OF THE WORKS

The CONTRACTOR shall after signing this Agreement mobilize his resources and shall within one month of the date of signing this Agreement commence the WORKS on the Site allocated to him for that purpose.

7.00 TIME FOR COMPLETION :

For entire WORKS shall be completed within

.....
from the agreed date of commencement under Clause 6.00

8.00 RESPONSIBILITIES

The CONTRACTOR shall be absolutely and solely responsible for the methods employed in carrying out the WORKS and responsible for the WORKS being executed in the best manner and with the best quality materials and workmanship and he shall provide an ample and sufficient staff to supervise the WORKS, to the satisfaction of the EMPLOYER.

9.00 CARE, DELIGENCE AND RESPONSIBILITIES

The CONTRACTOR shall exercise reasonable skill, care and deligence in performing the WORKS and shall carry out the provision of this AGREEMENT with reasonable expedition and despatch.

9.01 The EMPLOYER may at any time require the CONTRACTOR to remove from the site any person employed by him who in the opinion of the EMPLOYER misconducts himself or is incompetent or negligent in the performance of the WORKS or is considered undesirable for any other reason.

9.02 The CONTRACTOR shall designate professionally qualified Officers who shall be legally entitled to negotiate and sign in the name of the CONTRACTOR.

9.03 The CONTRACTOR agrees to permit any authorised representative of the EMPLOYER to enter the Site and inspect the WORKS at all reasonable hours of the day and make comments and recommendations.

9.04 The CONTRACTOR shall not divulge to any unauthorised person or body any information obtained in connection with the WORKS.

10.00 PRACTICAL COMPLETION AND DEFECTS LIABILITY

10.01 When in the opinion of the EMPLOYER the WORKS are practically completed, he shall forthwith issue Completion Certificate to that effect and Practical Completion of the WORKS shall be deemed for all the purposes of this Contract to have taken place on the day named in such Certificate.

10.02 Any defects, Shrinkages or other faults which shall appear within the Defects Liability Period that is to say within after completion and which are due to materials or to exposure to sun or weather occuring before Practical Completion of the WORKS, shall be specified by the EMPLOYER in a Schedule of Defects which he shall deliver to the CONTRACTOR not later than 14 days after expiration of the said Defects Liability Period, and within a reasonable time after receipt of such

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schedule the defects, shrinkages and other faults therein specified shall be made good by the CONTRACTOR and (unless the EMPLOYER shall otherwise instruct, in which case the Contract sum shall be adjusted accordingly) entirely at his own cost.

10.03 Notwithstanding sub-Clause (2) above the EMPLOYER may whenever he considers it necessary so to do, issue instructions requiring any defect, shrinkage or other fault which shall appear within the Defects Liability Period and which is due to materials or workmanship not in accordance with this Contract or to exposure to sun or weather occurring before Practical Completion of the WORKS, to be made good, and the CONTRACTOR shall within a reasonable time after receipt of such instructions comply with the same, entirely at his own cost. Provided that no such instructions shall be issued after delivery of a schedule of Defects or after 14 days from the expiration of the said Defects Liability Period.

10.04 When in the opinion of the EMPLOYER any defects, shrinkages or, other faults which he may have required to be made good under sub-clauses (2) and (3) of this Clause shall have been made good he shall issue a Certificate to that effect, and completion of making good such defects shall be deemed for all the purposes of this Contract to have taken place on the day named in such Certificate.

10.05 In no case shall the CONTRACTOR be required to make good at his own cost any damage by sun or weather which may appear after Practical Completion of the WORKS, unless the EMPLOYER shall certify that such damage is due to injury which took place before Practical Completion of the WORKS.

11.00 INSURANCE OF WORKS

11.01 Before commencing the WORKS, the CONTRACTOR shall insure the WORKS and keep it insured throughout the execution of it in the joint names of the CONTRACTOR and EMPLOYER against all damage, loss or injury which may occur to the WORKS or to any adjoining property, including the property of the EMPLOYER or to any person by or arising out of the execution of the WORKS.

11.02 The CONTRACTOR shall also insure the WORKS against any injury to the third party including their property.

12.00 SAFETY

From the commencement to the completion of the WORKS the CONTRACTOR shall take full responsibility for the care thereof and of all temporary WORKS and in case any damage loss of injury shall happen to the WORKS or to any part thereof or to any temporary WORKS from any cause whatsoever, he shall at his own cost repair and make good the same.

13.00 ASSIGNMENT:

The CONTRACTOR shall not assign the WORKS or any part thereof without the prior written consent of the EMPLOYER.

14.00 DRAWINGS AND BILLS, SPECIFICATION ETC.

14.01 The CONTRACTOR shall furnish to the EMPLOYER on the signing of this Contract a full priced copy of the Bills of Quantities unless it has already been furnished. The Drawings, Specification and Bills of Quantities shall remain in the custody for the inspection of the EMPLOYER or the CONTRACTOR. The EMPLOYER without charge to the CONTRACTOR shall on the signing of this contract furnish him with two copies of the Drawings, Specification and Bills of Quantities and shall within a reasonable time also furnish him with such further Drawings as are reasonably nece-

ssary to enable him carry out all instructions and with any further details which in the opinion of the EMPLOYER are necessary for the execution of any part of the WORKS. The CONTRACTOR shall keep one copy of the Drawings, Bills of Quantities and the specification on the WORKS so as to be available to the EMPLOYER or his representative at all reasonable times.

Upon receiving final payments the CONTRACTOR shall forthwith return to the EMPLOYER all Drawings and Specifications bearing the EMPLOYER'S name.

14.02 None of the documents herein before mentioned shall be used by either of the parties thereto for any purpose other than this Contract.

15.00 DELAY AND EXTENSION OF TIME:

Upon it becoming reasonably apparent that progress of the Work is delayed, the CONTRACTOR shall forthwith give written Notice of the cause of the delay to the EMPLOYER asking of an extension of time and the granting of such extension of time shall not entitle the CONTRACTOR to any additional payment.

16.00 DETERMINATION BY EMPLOYER

16.01 If in the opinion of the EMPLOYER the CONTRACTOR shall make default in any one or more of the following respects, that is to say:

(a) If he without reasonable cause wholly suspends the carrying out of the WORKS before completion thereof, OR

(b) If he fails to proceed regularly and diligently with the WORKS, OR

(c) If he refuses to or persistently neglects to comply with any written Notice from the EMPLOYER requiring him to remove defective work or improper materials or goods and by such refusal or neglect the WORKS are materially affected and if he shall continue such default of twenty-one days after Notice to that effect specifying the default has been given to him, the EMPLOYER may, without prejudice to any other rights or remedies, thereupon by one month Notice terminate the employment of the CONTRACTOR under this Contract provided that Notice in pursuance of this Clause shall not be given unreasonably or vexatiously OR

(d) If he fails to comply with any of the provision of this Agreement.

16.02 **Bankruptcy of Contractor:** In the event of the CONTRACTOR becoming bankrupt or making a composition or arrangement with his creditors or being a company having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or Manager of the Company's business of undertaking only appointed, or possession taken or by or half of the Holders of any debentures secured by a floating charge, or any property comprised in or subject to floating charge, the employment of the CONTRACTOR under this Contract is determined but the said employment may be reinstated and continued if the EMPLOYER and the CONTRACTOR or his trustee in bankruptcy or liquidator receiver or Manager, as the case may be, shall so agree.

16.03 In the event of the employment of the CONTRACTOR being terminated and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the EMPLOYER and CONTRACTOR. Viz;

(a) The EMPLOYER may employ and pay another CONTRACTOR or other person or persons to carry out and complete the WORKS and he or they may enter upon the Site and use all temporary building, plant, machinery, appli-

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ances, goods and materials thereon, and may purchase all materials necessary for the carrying out and completion of the WORKS.

- (b) The CONTRACTOR shall, if so required by the EMPLOYER within fourteen days of any of the conditions referred to under sub-clause (2) of this Clause, assign to the EMPLOYER without further payment the benefit of any Agreement for the supply of materials and/or for the execution of any WORKS for the purpose of this Contract but on the terms that a supplier or sub-Contractor shall be entitled to make any reasonable objection to any further assignment thereof by the EMPLOYER and the EMPLOYED may pay the Sub-Contractor for any such materials supplied or WORKS executed under such Agreement (whether the same be assigned as aforesaid or not) before or after the said determination the amount due by Sub Agreement in so far as it has not already been paid by the CONTRACTOR. The EMPLOYER'S rights under this Sub-Clause are in addition to his rights to pay nominated Sub-Contractor.
- (c) The CONTRACTOR shall not during the execution and before the completion of the WORKS under this Sub-Clause remove from the Site as and when required in writing within such reasonable time as the EMPLOYER may specify, and any temporary buildings, plant, machinery, appliances, goods, or materials belonging to or hired by him, and in default the EMPLOYER may (without being responsible to any loss or damage) remove and sell any such property of the CONTRACTOR holding the proceeds less all costs incurred to the Credit of the CONTRACTOR.
- (d) Until after completion of the WORKS the EMPLOYER he shall not be bound by any provision of this Contract to make any further payment to the CONTRACTOR, but upon such completion as aforesaid and the variation within a reasonable time of the accounts therefore the EMPLOYER shall certify the amount of expenses properly incurred by the EMPLOYER and, if such amount added to the monies paid to the CONTRACTOR before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the EMPLOYER by the CONTRACTOR; and if the said amount added to the said monies be less than the said total amount the difference shall be a debt payable by the EMPLOYER to the CONTRACTOR.

17.00 DETERMINATION BY CONTRACTOR

17.01 If the EMPLOYER within twenty-eight days after the presentation of any Certificate of the CONTRACTOR and thereafter does not pay to the CONTRACTOR the amount due on that Certificate, or if the EMPLOYER interferes with or obstructs the issuance of any such Certificate, or if the whole or substantially the whole of WORKS is delayed for one month by one or more of the causes other than local combination of workmen, strike or lockout, the CONTRACTOR may without prejudice to any other rights or remedies thereupon by notice by registered post to the EMPLOYER determine the employment under this Contract.

17.02 Upon such determination, then without prejudice to the accrued rights or remedies of either party, the CONTRACTOR or any sub-Contractors shall have removed his or their temporary buildings, plant, machinery, appliances, goods, or materials or by reason of his or their so removing the same, the respective rights and liabilities

of the CONTRACTOR and the EMPLOYER shall be as follows: Viz,

- (a) The CONTRACTOR shall with all reasonable despatch and in such manner and with such precautions as will prevent injury or damage of the classes for which before such determination he was liable remove from the Site all his temporary buildings, plant, machinery, appliances, goods and materials and shall give facilities for his sub-Contractors to do the same.

18.00 FORCE MAJEURE:

The term *Force Majeure* is applicable to the following occurrences (but not limited to them) war, revolution, insurrection, or hostilities (whether declared or not), riot, commotion, uprising, earth quakes, flood, tempest hurricane, natural disasters, epidemics and the likes which shall permanently or temporarily prevent the parties from performing their obligations under this Contract.

- 18.01 The parties shall not be responsible for delays and destructions affecting the WORKS if such is due to Force Majeure.

- 18.02 Should the occurrence of Force Majeure force the parties hereto to suspend their obligations under this Contract, the CONTRACTOR shall be compensated adequately for the WORKS executed up to the time of the commencement of the Force Majeure.

19.00 ARBITRATION:

Any dispute between the parties which cannot be settled by mutual consent shall be settled by arbitration under the Arbitration Act Cap. 13 Laws of the Federal Republic of Nigeria.

20.00 LAW OF THE AGREEMENT

This is a Nigerian Agreement, and shall be governed and construed according to the Laws of the Federal Republic of Nigeria.

21.00 ANTIQUITIES:

All fossils, antiquities and other object of interest or value which may be found on the Site or ascertaining the same during the progress of the WORKS shall become the property of the EMPLOYER. The CONTRACTOR shall carefully take out and preserve all such objects and shall immediately or as soon as conveniently after the discovery of such articles deliver the same unto the possession of the EMPLOYER.

22.00 PENALTY CLAUSE:

IT IS HEREBY AGREED that if the CONTRACTOR defaults or delays unreasonably to carry out any of his obligations under this Agreement for a period longer than one month he shall forfeit as penalty 1% per week of his contract price to the maximum of 10% to the EMPLOYER, provided always the EMPLOYER shall have served the CONTRACTOR with at least one month written Notice of such default and his intention to invoke the provision of this Clause.

23.00 VARIATION CLAUSE:

This Contract shall not be subject at any Variation whatsoever. Provided that if the Variation is justifiable it shall be by the consent of the Executive Secretary/Permanent who is the only person hereby authorised by the EMPLOYER to sanction such Variation.

24.00 SERVICE OF NOTICES

Any Notice to be served on the EMPLOYER shall be served at the Department of

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in case of the CONTRACTOR at

25.00 APPENDICES

The following documents shall be deemed to form part of this Agreement and shall be read and construed as part of the same: -

- | | |
|--------------------------|----------------|
| (1) DRAWINGS | - Appendix I |
| (2) SPECIFICATION | - Appendix II |
| (3) BILLS OF QUANTITIES | - Appendix III |
| (4) THE TENDER DOCUMENTS | - Appendix IV |
| (5) LETTER OF AWARD | - Appendix V |

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IN WITNESS WHEREOF the parties hereto have set their hands, seals the day and year first above written.

SIGNED, SEALED AND DELIVERED BY THE PERMANENT SECRETARY/EXECUTIVE SECRETARY

For and ON BEHALF OF THE EMPLOYER

NAME

ADDRESS

OCCUPATION

IN THE PRESENCE OF:-

NAME

ADDRESS

OCCUPATION:

SIGNED, SEALED AND DELIVERED BY THE CONTRACTOR:

NAME

ADDRESS

OCCUPATION

IN THE PRESENCE OF:-

NAME

ADDRESS

OCCUPATION

Supplement to Official Gazette Extraordinary No. 14, Vol. 65, 29th March,
1978—Part A

LAND USE DECREE 1978



ARRANGEMENT OF SECTIONS

Section

PART I—GENERAL

1. Vesting of all land in the State.
2. Control and management of land; advisory bodies.
3. Designation of urban areas.
4. Applicable law for the interim management of land.

PART II—PRINCIPLES OF LAND
TENURE, POWERS OF MILITARY
GOVERNOR AND LOCAL GOVERN-
MENTS, AND RIGHTS OF OCCUPIERS

5. Powers of the Military Governor in relation to land.
6. Powers of Local Government in relation to land not in urban areas.
7. Restrictions on rights of persons under age of 21.
8. Special contracts.
9. Certificates of occupancy.
10. Conditions and provisions implied in certificates of occupancy.
11. Power of Military Governor or public officer to enter and inspect land and improvements.
12. Power of Military Governor to grant licences to take building materials.
13. Duty of occupier of statutory right of occupancy to maintain beacons.
14. Exclusive rights of occupiers.
15. The right to improvements.

PART III—RENTS

16. Principles to be observed in fixing and revising rent.
17. Power of Military Governor to grant rights of occupancy free of rent or at reduced rent.
18. Acceptance of rent not to operate as a waiver of forfeiture.
19. Penal rent.
20. Additional penal rent for unlawful alienation.

PART IV—ALIENATION AND
SURRENDER OF RIGHTS OF
OCCUPANCY

21. Prohibition of alienation of customary right of occupancy except with requisite consent or approval.
22. Prohibition of alienation of statutory right of occupancy without consent of Military Governor.
23. Sub-under-leases.
24. Devolution of rights of occupancy on death.
25. Effect of deed or will where non-customary law applies.
26. Null and void transactions and instruments.
27. Surrender of statutory rights of occupancy.

PART V—REVOCATION OF RIGHTS
OF OCCUPANCY AND COMPENSATION
THEREFOR

28. Power of Military Governor to revoke rights of occupancy.
29. Compensation payable on revocation of right of occupancy by Military Governor in certain cases.

ARRANGEMENT OF SECTIONS—*continued*

Section

- 30. Reference of dispute as to compensation.
- 31. Exclusion of the application of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976.
- 32. Debt due to Government not extinguished by revocation.
- 33. Option to accept re-settlement in case of revocation of right of occupancy.

PART VI—TRANSITIONAL AND OTHER RELATED PROVISIONS

- 34. Transitional provisions on land in urban areas.
- 35. Compensation for improvements in certain cases.
- 36. Transitional provisions on land not in urban areas.
- 37. Penalty for false claims, etc. in respect of land.
- 38. Preservation of power of Military Governor to revoke rights of occupancy.

PART VII—JURISDICTION OF HIGH COURTS AND OTHER COURTS

- 39. Jurisdiction of High Courts.
- 40. Special provisions in respect of pending proceedings.
- 41. Jurisdiction of area courts or customary courts, etc.
- 42. Proceedings for recovery of rent in respect of certificate of occupancy, etc.

PART VIII—SUPPLEMENTAL

- 43. Prohibition of and penalties for unauthorised use of land.
- 44. Service of notices.
- 45. Delegation of powers.
- 46. Power to make regulations.
- 47. Exclusion of certain proceedings.
- 48. Modification of existing laws.
- 49. Exemption with respect to Federal Government lands, etc.
- 50. Interpretation.
- 51. Citation

Decree No. 6

[29th March 1978]

Commence-
ment.

WHEREAS it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law :

AND WHEREAS it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved :

NOW THEREFORE, THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

PART I—GENERAL

1. Subject to the provisions of this Decree, all land comprised in the territory of each State in the Federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Decree.

Vesting of
all land in
the State.

2.—(1) As from the commencement of this Decree :—

(a) all land in urban areas shall be under the control and management of the Military Governor of each State ; and

(b) all other land shall, subject to this Decree, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated.

Control and
management
of land ;
advisory
bodies.

(2) There shall be established in each State a body to be known as "the Land Use and Allocation Committee" which shall have responsibility for—

(a) advising the Military Governor on any matter connected with the management of land to which paragraph (a) of subsection (1) above relates ;

(b) advising the Military Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under this Decree ; and

(c) determining disputes as to the amount of compensation payable under this Decree for improvements on land.

(3) The Land Use and Allocation Committee shall consist of such number of persons as the Military Governor may determine and shall include in its membership—

(a) not less than two persons possessing qualifications approved for appointment to the public service as estate surveyors or land officers and who have had such qualification for not less than five years ; and

(b) a legal practitioner.

(4) The Committee shall be presided over by such one of its members as may be designated by the Military Governor and, subject to such directions as may be given in that regard by the Military Governor, shall have power to regulate its proceedings.

Designation
of urban
areas.

Applicable
law for the
interim
management
of land.

Powers of
the Military
Governor in
relation to
land.

(5) There shall also be established for each Local Government a body to be known as "the Land Allocation Advisory Committee" which shall consist of such persons as may be determined by the Military Governor acting after consultation with the Local Government and shall have responsibility for advising the Local Government on any matter connected with the management of land to which paragraph (b) of subsection (1) above relates.

3. Subject to such general conditions as may be specified in that behalf by the National Council of States, the Military Governor may for the purposes of this Decree by order published in the State *Gazette* designate the parts of the area of the territory of the State constituting land in an urban area.

4. Until other provisions are made in that behalf and, subject to the provisions of this Decree, land under the control and management of the Military Governor under this Decree shall be administered—

(a) in the case of any State where the Land Tenure Law of the former Northern Nigeria applies, in accordance with the provisions of that Law ; and

(b) in every other case, in accordance with the provisions of the State Land Law applicable in respect of State land in the State,

and the provisions of the Land Tenure Law or the State Land Law, as the case may be, shall have effect with such modifications as would bring those Laws into conformity with this Decree or its general intentment.

PART II—PRINCIPLES OF LAND TENURE, POWERS OF MILITARY GOVERNOR AND LOCAL GOVERNMENTS, AND RIGHTS OF OCCUPIERS

5.—(1) It shall be lawful for the Military Governor in respect of land, whether or not in an urban area—

- (a) to grant statutory rights of occupancy to any person for all purposes ;
- (b) to grant easements appurtenant to statutory rights of occupancy ;
- (c) to demand rental for any such land granted to any person ;
- (d) to revise the said rental—

(i) at such intervals as may be specified in the certificate of occupancy ; or

(ii) where no intervals are specified in the certificate of occupancy at any time during the term of the statutory right of occupancy ;

(e) to impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land the subject of the certificate of occupancy and to revise such penal rent as provided in section 19 ;

(f) to impose a penal rent for a breach of any condition, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of occupancy or any part thereof by sale, mortgage, transfer of possession, sub-lease or bequest or otherwise howsoever without the prior consent of the Military Governor ;

(g) to waive, wholly or partially, except as otherwise prescribed, all or any of the covenants or conditions to which a statutory right of occupancy is subject where, owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder ;

(h) to extend except as otherwise prescribed, the time to the holder of a statutory right of occupancy for performing any of the conditions of the right of occupancy upon such terms and conditions as he may think fit.

(2) Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.

6.—(1) It shall be lawful for a Local Government in respect of land not in an urban area—

(a) to grant customary rights of occupancy to any person or organisation for the use of land in the Local Government area for agricultural, residential and other purposes;

(b) to grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government area concerned.

(2) No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Military Governor.

(3) It shall be lawful for a Local Government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not—

(a) land within an area declared to be an urban area pursuant to section 3 of this Decree ;

(b) the subject of a statutory right of occupancy ;

(c) within any area compulsorily acquired by the Government of the Federation or of the State concerned ;

(d) the subject of any laws relating to minerals or mineral oils, and for the purpose to revoke any customary right of occupancy on any such land.

(4) The Local Government shall have exclusive rights to the lands so occupied against all persons except the Military Governor.

(5) The holder and the occupier according to their respective interests of any customary right of occupancy revoked under subsection (2) shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

(6) Where land in respect of which a customary right of occupancy is revoked under this Decree was used for agricultural purposes by the holder, the Local Government shall allocate to such holder alternative land for use for the same purpose.

Powers of
Local
Government
in relation
to land not
in urban
areas.

Restriction on rights of persons under age of 21.	<p>(7) If a Local Government refuses or neglects within a reasonable time to pay compensation to a holder and an occupier according to their respective interests under the provisions of subsection (5), the Military Governor may proceed to the assessment of compensation under section 29 and direct the Local Government to pay the amount of such compensation to the holder and occupier according to their respective interests.</p> <p>7. It shall not be lawful for the Military Governor to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of twenty-one years :</p> <p>Provided that—</p> <p>(a) where a guardian or trustee for a person under the age of 21 has been duly appointed for such purpose the Military Governor may grant or consent to the assignment or subletting of a statutory right of occupancy to such guardian or trustee on behalf of such person under age ;</p> <p>(b) a person under the age of twenty-one years upon whom a statutory right of occupancy devolves on the death of the holder shall have the same liabilities and obligations under and in respect of his right of occupancy as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him.</p>
Special contracts.	<p>8. Statutory right of occupancy granted under the provisions of section 5 (1) (a) shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Military Governor and the holder not being inconsistent with the provisions of this Decree.</p>
Certificates of occupancy.	<p>9.—(1) It shall be lawful for the Military Governor—</p> <p>(a) when granting a statutory right of occupancy to any person ; or</p> <p>(b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner ; or</p> <p>(c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy.</p> <p>(2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefor by the person in whose name it is issued, such fee (if any) as may be prescribed.</p> <p>(3) If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses or neglects to accept and pay for the certificate, the Military Governor may cancel the certificate and recover from such person any expenses incidental thereto, and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (a) of subsection (1) the Military Governor may revoke the statutory right of occupancy.</p> <p>(4) The terms and conditions of a certificate of occupancy granted under this Decree and which has been accepted by the holder shall be enforceable against the holder and his successors in title, notwithstanding that the acceptance of such terms and conditions is not evidenced by the signature of the holder or is evidenced by the signature only or, in the case of a corporation, is evidenced by the signature only of some person purporting to accept on behalf of the corporation.</p>
Conditions and provisions implied in certificates of occupancy.	<p>10. Every certificate of occupancy shall be deemed to contain provisions to the following effect—</p> <p>(a) that the holder binds himself to pay to the Military Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation ;</p>

(b) that the holder binds himself to pay to the Military Governor the rent fixed by the Military Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16.

11. The Military Governor or any public officer duly authorised by the Military Governor in that behalf shall have the power to enter upon and inspect the land comprised in any statutory right of occupancy or any improvements effected thereon at any reasonable hours in the day time and the occupier shall permit and give free access to the Military Governor or any such officer so to enter and inspect.

Power of Military Governor or public officer to enter and inspect land and improvements.

12.—(1) It shall be lawful for the Military Governor to grant a licence to any person to enter upon any land which is not the subject of a statutory right of occupancy or of a mining lease, mining right or exclusive prospecting licence granted under the Minerals Act or any other enactment, and remove or extract therefrom any stone, gravel, clay, sand or other similar substance (not being a mineral within the meaning assigned to that term in the Minerals Act) that may be required for building or for the manufacture of building materials.

Power of Military Governor to grant licences to take building materials.

(2) Any such licence may be granted for such period and subject to such conditions as the Military Governor may think proper or as may be prescribed.

(3) No such licence shall be granted in respect of an area exceeding 400 hectares.

(4) It shall not be lawful for any licensee to transfer his licence in any manner whatsoever without the consent of the Military Governor first had and obtained, and any such transfer effected without the consent of the Military Governor shall be null and void.

(5) The Military Governor may cancel any such licence if the licensee fails to comply with any of the conditions of the licence.

13.—(1) The occupier of a statutory right of occupancy shall at all times maintain in good and substantial repair to the satisfaction of the Military Governor, or of such public officer as the Military Governor may appoint in that behalf, all beacons or other land marks by which the boundaries of the land comprised in the statutory right of occupancy are defined and in default of his so doing the Military Governor or such public officer as aforesaid may by notice in writing require the occupier to define the boundaries in the manner and within the time specified in such notice.

Duty of occupier of statutory right of occupancy to maintain beacons.

(2) If the occupier of a statutory right of occupancy fails to comply with a notice served under subsection (1) of this section he shall be liable to pay the expenses (if any) incurred by the Military Governor in defining the boundaries which the occupier has neglected to define.

14. Subject to the other provisions of this Decree and of any laws relating to wayleaves, to prospecting for minerals or mineral oils or to mining or to oil pipelines and subject to the terms and conditions of any contract made under section 8, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Military Governor.

Exclusive rights of occupiers.

The right to improve-ments.

15. During the term of a statutory right of occupancy the holder—

(a) shall have the sole right to and absolute possession of all the improvements on the land ;

(b) may, subject to the prior consent of the Military Governor, transfer, assign or mortgage any improvements on the land which have been effected pursuant to the terms and conditions of the certificate of occupancy relating to the land.

PART III—RENTS

Principles to be observed in fixing and revising rents.

16. In determining the amount of the original rent to be fixed for any particular land and the amount of the revised rent to be fixed on any subsequent revision of rent, the Military Governor—

(a) shall take into consideration the rent previously fixed in respect of any other like land in the immediate neighbourhood, and shall have regard to all the circumstances of the case ;

(b) shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital.

Power of Military Governor to grant rights of occupancy free of rent or at reduced rent.

17.—(1) The Military Governor may grant a statutory right of occupancy free of rent or at a reduced rent in any case in which he is satisfied that it would be in the public interest to do so.

(2) Where a statutory right of occupancy has been granted free of rent the Military Governor may, subject to the express provisions of the certificate of occupancy, nevertheless impose a rent in respect of the land the subject of the right of occupancy if and when he may think fit.

Acceptance of rent not to operate as a waiver of forfeiture.

18. Subject to the provisions of sections 20 and 21, the acceptance by or on behalf of the Military Governor of any rent shall not operate as a waiver by the Military Governor of any forfeiture accruing by reason of the breach of any covenant or condition, express or implied, in any certificate of occupancy granted under this Decree.

Penal rent.

19.—(1) When in any certificate of occupancy the holder has covenanted to develop or effect improvements on the land the subject of the certificate of occupancy and has committed a breach of such covenant the Military Governor may—

(a) at the time of such breach or at any time thereafter, so long as the breach remains unremedied, fix a penal rent which shall be payable for twelve months from the date of such breach ; and

(b) on the expiration of twelve months from the date of such breach and on the expiration of every subsequent twelve months so long as the breach continues revise the penal rent to be paid.

(2) Such penal rent or any revision thereof shall be in addition to the rent reserved by the certificate of occupancy and shall be recoverable as rent :

Provided that the first penal rent fixed shall not exceed the rent so reserved and any revised penal rent shall not exceed double the penal rent payable in respect of the twelve months preceding the date of revision.

(3) If the Military Governor fixes or revises a penal rent he shall cause a notice in writing to be sent to the holder informing him of the amount thereof and the rent so fixed or revised shall commence to be payable one calendar month from the date of the receipt of such notice.

(4) If the breach for which a penal rent has been imposed is remedied before the expiration of the period for which such rent has been paid, the Military Governor may in his discretion refund such portion of the penal rent paid for such period as he may think fit.

(5) The fact that a penal rent or a revised penal rent has been imposed shall not preclude the Military Governor, in lieu of fixing a subsequent penal rent, from revoking the statutory right of occupancy :

Provided that the statutory right of occupancy shall not be revoked during the period for which a penal rent has been paid.

20.—(1) If there has been any breach of any of the provisions of section 22 or 23 the Military Governor may in lieu of revoking the statutory right of occupancy concerned demand that the holder shall pay an additional and penal rent for and in respect of each day during which the land the subject of the statutory right of occupancy or any portion thereof or any buildings or other works erected thereon shall be or remain in the possession, control or occupation of any person whomsoever other than the holder.

Additional
penal rent
for unlawful
alienation.

(2) Such additional and penal rent shall be payable upon demand and shall be recoverable as rent.

(3) The acceptance by or on behalf of the Military Governor of any such additional and penal rent shall not operate as a waiver by the Military Governor of any breach of section 22 or 23 which may continue after the date up to and in respect of which such additional and penal rent has been paid or is due and owing and the Military Governor shall accordingly be entitled to exercise in respect of any such continuing breach all or any of the powers conferred upon him by this Decree.

PART IV—ALIENATION AND SURRENDER OF RIGHTS OF OCCUPANCY

21. It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever—

Prohibition
of alienation
of customary
right of
occupancy
except with
requisite
consent or
approval.

(a) without the consent of the Military Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law ; or

(b) in other cases without the approval of the appropriate Local Government.

22. It shall not be lawful for the holder of a statutory right of occupancy granted by the Military Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Military Governor first had and obtained :

Prohibition
of alienation
of statutory
right of
occupancy
without
consent of
Military
Governor.

Provided that the consent of the Military Governor—

(a) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Military Governor ;

(b) shall not be required to the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the Military Governor ;

(c) to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.

(2) The Military Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Military Governor in order that the consent given by the Military Governor under subsection (1) may be signified by endorsement thereon.

Sub-under-
leases.

23.—(1) A sub-lessee of a statutory right of occupancy may, with the prior consent of the Military Governor and with the approval of the holder of the statutory right of occupancy, demise by way of sub-underlease to another person the land comprised in the sub-lease held by him or any portion of the land.

(2) The provisions of subsection (2) of section 22 shall apply *mutatis mutandis* to any transaction effected under subsection (1) of this section as if it were a sub-lease granted under section 22.

Devolution
of rights of
occupancy
on death.

24. The devolution of the rights of an occupier upon death shall—

(a) in the case of a customary right of occupancy, unless non customary law or any other customary law applies be regulated by the customary law existing in the locality in which the land is situated ; and

(b) in the case of a statutory right of occupancy (unless any non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy :

Provided that—

(a) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law ;

(b) a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Military Governor.

Effect of
deed or will
where non-
customary
law applies.

25. In the case of the devolution or transfer of rights to which any non-customary law applies, no deed or will shall operate to create any proprietary right over land except that of a plain transfer of the whole of the rights of occupation over the whole of the land.

Null and
void transac-
tions and
instruments.

26. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Decree shall be null and void.

Surrender
of statutory
rights of
occupancy.

27. The Military Governor may accept on such terms and conditions as he may think proper the surrender of any statutory right of occupancy granted under this Decree.

PART V—REVOCATION OF RIGHTS OF OCCUPANCY
AND COMPENSATION THEREFOR

28.—(1) It shall be lawful for the Military Governor to revoke a right of occupancy for overriding public interest.

(2) Overriding public interest in the case of a statutory right of occupancy means—

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Decree or of any regulations made thereunder ;

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation ;

(c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

(3) Overriding public interest in the case of a customary right of occupancy means—

(a) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation ;

(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith ;

(c) the requirement of the land for the extraction of building materials ;

(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(4) The Military Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the Head of the Federal Military Government if such notice declares such land to be required by the Government for public purposes.

(5) The Military Governor may revoke a statutory right of occupancy on the ground of—

(a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain ;

(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 ;

(c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 10.

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Military Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (5) or on such later date as may be stated in the notice.

Power of
Military
Governor to
revoke rights
of occupancy.

Compensation payable on revocation of right of occupancy by Military Governor in certain cases.

29.—(1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or in paragraph (a) or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

(2) If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.

(3) If the holder or the occupier entitled to compensation under this section is a community the Military Governor may direct that any compensation payable to it shall be paid—

- (a) to the community ; or
- (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law ; or
- (c) into some fund specified by the Military Governor for the purpose of being utilised or applied for the benefit of the community.

(4) Compensation under subsection (1) of this section shall be, as respects—

- (a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked ;
- (b) buildings, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer ;
- (c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.

(5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in the like manner.

(6) Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is as respects—

- (a) such land, on the basis specified in that subsection ;
- (b) any building, installation or improvement or crops thereon (or any combination of two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable,

and any interest payable under those provisions shall be computed in like manner.

(7) For the purposes of this section, "installation" means any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.

30. Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

Reference of dispute as to compensation.

31. The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976 shall not apply in respect of any land vested in, or taken over by, the Military Governor or any Local Government pursuant to this Decree or the right of occupancy to which is revoked under the provisions of this Decree but shall continue to apply in respect of land compulsorily acquired before the commencement of this Decree.

Exclusion of the application of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976.

32. The revocation of a statutory right of occupancy shall not operate to extinguish any debt due to the Government under or in respect of such right of occupancy.

1976 No. 31. Debt due to Government not extinguished by revocation.

33.—(1) Where a right of occupancy in respect of any developed land on which a residential building has been erected is revoked under this Decree the Military Governor or the Local Government, as the case may be, may in his or its discretion offer in lieu of compensation payable in accordance with the provisions of this Decree resettlement in any other place or area by way of a reasonable alternative accommodation (if appropriate in the circumstances).

Option to accept resettlement in case of revocation of right of occupancy.

(2) Where the value of any alternative accommodation as determined by the appropriate officer or the Land Use and Allocation Committee is higher than the compensation payable under this Decree the parties concerned may by agreement require that the excess in value in relation to the property concerned shall be treated as a loan which the person affected shall refund or repay to the Government in the prescribed manner.

(3) Where a person accepts a resettlement pursuant to subsection (1) of this section his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such person.

PART VI—TRANSITIONAL AND OTHER RELATED PROVISIONS

34.—(1) The following provisions of this section shall have effect in respect of land in an urban area vested in any person immediately before the commencement of this Decree.

Transitional provisions on land in urban areas.

(2) Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Decree as if the holder of the land was the holder of a statutory right of occupancy issued by the Military Governor under this Decree.

(3) In respect of land to which subsection (2) of this section applies there shall be issued by the Military Governor on application to him in the prescribed form a certificate of occupancy if the Military Governor is satisfied that the land was, immediately before the commencement of this Decree, vested in that person.

(4) Where the land to which subsection (2) of this section applies was subject to any mortgage, legal or equitable, or any encumbrance or interest valid in law such land shall continue to be so subject and the certificate of occupancy issued, shall indicate that the land is so subject, unless the continued operation of the encumbrance or interest would in the opinion of the Military Governor be inconsistent with the provisions, or general intentment of this Decree.

(5) Where on the commencement of this Decree the land is undeveloped, then—

(a) one plot or portion of the land not exceeding half hectare in area shall subject to subsection (6) below, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of a statutory right of occupancy granted by the Military Governor in respect of the plot or portion as aforesaid under this Decree ; and

(b) all the rights formerly vested in the holder in respect of the excess of the land shall on the commencement of this Decree be extinguished and the excess of the land shall be taken over by the Military Governor and administered as provided in this Decree.

(6) Paragraph (a) of subsection (5) above shall not apply in the case of any person who was on the commencement of this Decree also the holder of any undeveloped land elsewhere in any urban area in the State and in respect of such a person all his holdings of undeveloped land in any urban area in the State shall be considered together and out of the undeveloped land so considered together—

(a) one plot or portion not exceeding $\frac{1}{4}$ hectare in area shall continue to be held by such a person as if a right of occupancy had been granted to him by the Military Governor in respect of that plot or portion ; and

(b) the remainder of the land (so considered together) in excess of $\frac{1}{4}$ hectare shall be taken over by the Military Governor and administered in accordance with this Decree and the rights formerly vested in the holder in respect of such land shall be extinguished.

(7) No land to which subsection (5) (a) or (6) above applies held by any person shall be further subdivided or laid out in plots and no such land shall be transferred to any person except with the prior consent in writing of the Military Governor.

(8) Any instrument purporting to transfer any undeveloped land in contravention of subsection (7) above shall be void and of no effect whatsoever in law and any party to any such instrument shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine of ₦5,000.

(9) In relation to land to which subsection (5) (a) or (6) (a) applies there shall be issued by the Military Governor on application therefor in the prescribed form a certificate of occupancy if the Military Governor is satisfied that the land was immediately before the commencement of this Decree vested in that person.

Compensation for improvements in certain cases.

35.—(1) Section 34 of this section shall have effect notwithstanding that the land in question was held under a leasehold, whether customary or otherwise, and formed part of an estate laid out by any person, group or family in whom the leasehold interest or reversion in respect of the land was vested immediately before the commencement of this Decree so however

on, group or family in whom the leasehold interest or reversion was vested that if there has been any improvements on the land effected by the person; as aforesaid the Military Governor shall, in respect of the improvements, pay to that person, group or family compensation computed as specified in section 29 of this Decree.

(2) There shall be deducted from the compensation payable under subsection (1) of this section any levy by way of development or similar charges paid in respect of the improvements on the land by the lessee to the person, group or family in whom the leasehold interest or reversion was vested and the amount to be deducted shall be determined by the Military Governor taking into consideration all the circumstances of the case.

36.—(1) The following provisions of this section shall have effect in respect of land not in an urban area which was immediately before the commencement of this Decree held or occupied by any person.

(2) Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this Decree being used for agricultural purposes continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the customary of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

(3) On the production to the Local Government by the occupier of such land, at his discretion, of a sketch or diagram or other sufficient description of the land in question and on application therefor in the prescribed form from the Local Government shall if satisfied that the occupier or holder was entitled to the possession of such land whether under customary rights or otherwise howsoever, and that the land was being used for agricultural purposes at the commencement of this Decree register the holder or occupier as one to whom a customary right of occupancy had been issued in respect of the land in question.

(4) Where the land is developed, the land shall continue to be held by the person whom it was vested immediately before the commencement of this Decree as if the holder of the land was the holder of a customary right of occupancy issued by the Local Government, and if the holder or occupier of such developed land, at his discretion, produces a sketch or diagram showing the area of the land so developed the Local Government shall if satisfied that that person immediately before the commencement of this Decree has the land vested in him register the holder or occupier as one in respect of whom a customary right of occupancy has been granted by the Local Government.

(5) No land to which this section applies shall be sub-divided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid.

(6) Any instrument purporting to transfer any land to which this section relates shall be void and of no effect whatsoever in law and every party to any such instrument shall be guilty of an offence and shall on conviction to a fine of ₦5,000 or to imprisonment for 1 year.

Transitional
provisions
on land not
in urban
areas.

Penalty for false claims, etc. in respect of land.

37. If any person other than one in whom any land was lawfully vested immediately before the commencement of this Decree enters any land in purported exercise of any right in relation to possession of the land or makes any false claim in respect of the land to the Military Governor or any Local Government for any purpose under this section, he shall be guilty of an offence and liable on conviction to an imprisonment for one year or to a fine of ₦5,000.

Preservation of power of Military Governor to revoke rights of occupancy.

38. Nothing in this Part shall be construed as precluding the exercise by the Military Governor or as the case may be the Local Government concerned of the powers to revoke, in accordance with the applicable provisions of this Decree, rights of occupancy, whether statutory or customary, in respect to any land to which this Part relates.

PART VII.—JURISDICTION OF HIGH COURTS AND OTHER COURTS

Jurisdiction of High Courts.

39.—(1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings :—

(a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Military Governor or deemed to be granted by him under this Decree ; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a statutory right of occupancy ;

(b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Decree.

(2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.

Special provisions in respect of pending proceedings.

40. Where on the commencement of this Decree proceedings had been commenced or were pending in any court or tribunal (whether at first instance or on appeal) in respect of any question concerning or pertaining to title to any and or interest therein such proceedings may be continued and be finally disposed of by the court concerned but any order or decision of the court shall only be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provided in this Decree.

Jurisdiction of area courts or customary courts, etc.

41. An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Decree ; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section.

Proceedings for recovery of rent in respect of certificate of occupancy, etc.

42.—(1) Proceedings for the recovery of rent payable in respect of any certificate of occupancy may be taken before a Magistrates Court of competent jurisdiction by and in the name of the Chief Lands Officer or by and in the name of any other officer appointed by the Military Governor in that behalf.

(2) Proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the Local Government concerned in the area court or customary court or any court of equivalent jurisdiction.

PART VIII—SUPPLEMENTAL

43.—(1) Save as permitted under section 34 of this Decree, as from the commencement of this Decree no person shall in an urban area—

- (a) erect any building, wall, fence or other structure upon ; or
- (b) enclose, obstruct, cultivate or do any act on or in relation to,

any land which is not the subject of a right of occupancy or licence lawfully held by him or in respect of which he has not received the permission of the Military Governor to enter and erect improvements prior to the grant to him of a right of occupancy.

(2) Any person who contravenes any of the provisions of subsection (1) shall on being required by the Military Governor so to do and within the period of time fixed by the Military Governor, remove any building, wall, fence, obstruction, structure or thing which he may have caused to be placed on the land and he shall put the land in the same condition as nearly as may be in which it was before such contravention.

(3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦5,000.

(4) Any person who fails or refuses to comply with a requirement made by the Military Governor under subsection (2) shall be guilty of an offence and liable on conviction to a fine of ₦100 for each day during which he makes default in complying with the requirement of the Military Governor.

44. Any notice required by this Decree to be served on any person shall be effectively served on him—

- (a) by delivering it to the person on whom it is to be served ; or
- (b) by leaving it at the usual or last known place of abode of that person ; or
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode ; or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office ; or
- (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

45.—(1) The Military Governor may delegate to the State Commissioner all or any of the powers conferred on the Military Governor by this Decree, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intentment, of this Decree as the Military Governor may specify.

Prohibition of and penalties for unauthorised use of land.

Service of notices.

Delegation of powers.

(2) Where the power to grant certificates has been delegated to the State Commissioner such certificates shall be expressed to be granted on behalf of the Military Governor.

Power to
make regu-
lations.

46.—(1) The National Council of States may make regulations for the purpose of carrying this Decree into effect and particularly with regard to the following matters—

- (a) the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians ;
- (b) the terms and conditions upon which special contracts may be made under section 8 ;
- (c) the grant of certificates of occupancy under section 9 ;
- (d) the grant of temporary rights of occupancy ;
- (e) the method of assessment of compensation for the purposes of section 29 of this Decree.

(2) The Military Governor may, subject to subsection (1) make regulations with regard to the following matters :—

- (a) the method of application for any licence or permit and the terms and conditions under which licences may be granted ;
- (b) the procedure to be observed in revising rents ;
- (c) the fees to be paid for any matter or thing done under this Decree ;
- (d) the forms to be used for any document or purpose.

Exclusion
of certain
proceedings.

47.—(1) This Decree shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federation or of a State and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into :—

- (a) any question concerning or pertaining to the vesting of all land in the Military Governor in accordance with the provisions of this Decree ; or
- (b) any question concerning or pertaining to the right of the Military Governor to grant a statutory right of occupancy in accordance with the provisions of this Decree ; or
- (c) any question concerning or pertaining to the right of a Local Government to grant a customary right of occupancy under this Decree.

(2) No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Decree.

Modifica-
tion of
existing laws.

48. All existing law relating to the registration of title to, or interest in, land or the transfer of title to or any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Decree or its general intentment.

Exemption
with respect
to Federal
Government
lands, etc.

49.—(1) Nothing in this Decree shall affect any title to land whether developed or undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Decree and, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.

(2) In this section, "agency" includes any statutory corporation or any other statutory body (whether corporate or unincorporate) or any company wholly-owned by the Federal Government.

50.—(1) In this Decree, unless the context otherwise requires:—

Interpreta-
tion.

"agricultural purposes" includes the planting of any crops of economic value ;

"appropriate officer" means the Chief Lands officer of a State and in the case of the Federal Capital Territory means the Chief Federal Lands Officer ;

"customary right of occupancy" means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under this Decree ;

"developed land" means land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes ;

"easement" means a right annexed to land to utilize other land in different holding in a particular manner (not involving the taking of any part of the natural produce of that land or of any part of its soil) or to prevent the holder of the other land from utilizing his land in a particular manner ;

"Government" means the Government of the Federation or the Government of a State ;

"grazing purposes" includes only such agricultural operations as are required for growing fodder for livestock on the grazing area ;

"High Court" means the High Court of the State concerned ;

"holder" in relation to a right of occupancy, means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly assigned or has validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without a valid assignment, nor a mortgagee, sub-lessee or sub-underlessee ;

"improvements" or "unexhausted improvements" means anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of longlived crops or trees, fencing, wells, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce ;

"interest at the bank rate" means a simple interest payable at the rate per cent per annum at which the Central Bank of Nigeria will rediscount bills of exchange ;

"Local Government" means the appropriate Local Government or any other body having or exercising the powers of a Local Government as provided by law in respect of the area where the land in question is situated ;

"Military Governor" means the Military Governor of the State concerned ;

"mortgage" includes a second and subsequent mortgage and equitable mortgage ;

"occupier" means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-lessee or sub-underlessee of a holder ;

"public purposes" includes—

- (a) for exclusive Government use or for general public use ;
- (b) for use by any body corporate directly established by law or by any body corporate registered under the Companies Decree 1968 as respects which the Government owns shares, stocks or debentures ;
- (c) for or in connection with sanitary improvements of any kind ;
- (d) for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government ;
- (e) for obtaining control over land required for or in connection with development of telecommunications or provision of electricity ;
- (f) for obtaining control over land required for or in connection with mining purposes ;
- (g) for obtaining control over land required for or in connection with planned urban or rural development or settlement ;
- (h) for obtaining control over land required for or in connection with economic, industrial or agricultural development ;
- (i) for educational and other social services ;

"statutory right of occupancy" means a right of occupancy granted by the Military Governor under this Decree ;

"urban area" means such area of the State as may be designated as such by the Military Governor pursuant to section 3 of this Decree ;

"sub-lease" includes a sub-underlessee.

(2) The powers of a Military Governor under this Decree shall, in respect of land comprised in the Federal Capital Territory or any land held or vested in the Federal Government in any State, be exercisable by the Head of the Federal Military Government or any Federal Commissioner designated by him in that behalf and references in this Decree to Military Governor shall be construed accordingly.

Citation.

51. This Decree may be cited as the Land Use Decree 1978.

MADE at Lagos this 29th day of March 1978.

LT-GENERAL O. OBASANJO,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

APPENDIX D

Capital Development Authority (Establishment)

GOVERNMENT NOTICE No.23a published on 12.10.73

THE PUBLIC CORPORATIONS ACT, 1969

(No.17 of 1969)

ORDER

Under sections 3, 5, 8 and 11

THE CAPITAL DEVELOPMENT AUTHORITY (ESTABLISHMENT) ORDER, 1973

1. This Order may be cited as the Capital Development Authority Title (Establishment) Order, 1973.
2. In this Order, unless the context otherwise requires -
"the Authority" means the Capital Development Authority
established by paragraph 3:
"Board" means the Board of Directors provided for in paragraph 6.
3. There is hereby established a public corporation to be known as the Capital Development Authority
4. The functions of the Authority shall be -
 - (a) to implement the decision to transfer the capital of Tanzania to Dodoma;
 - (b) to prepare plans for the development of Dodoma as the capital of Tanzania and submit the same to the President and further to implement any such plans approved by the President;
 - (c) to carry out and effect the necessary development of Dodoma so as to render the same suitable for the capital of Tanzania;
 - (d) to advise and assist the Government on an orderly transfer to Dodoma of various Government and other public offices;
 - (e) to acquire and hold, subject to the directions of the President, land and other immovable properties;
 - (f) to provide any service or facility which any Ministry, Department or Division of the Government, any public corporation or other parastatus institution, or any company, firm or other person may require for an orderly transfer of its business, activities and personnel to Dodoma;
 - (g) to do anything or to enter into any transaction which in the opinion of the Board is calculated to facilitate the proper and efficient carrying on of its activities and the proper performance of its functions, as specified in this paragraph.

Interpretation
Establishment
of the
Authority
Functions
of the
Authority

Capital Development Authority (Establishment)

G.N. No 230 (cont'd)

Appointment
of Director
and staff

5. - (1) The President shall appoint a Director-General who shall be the principal administrative, executive and co-ordinating officer of the Authority and shall be responsible to the Board

(2) The Board may, from time to time, appoint on such terms and conditions as it may seem fit, such officers and servants of the Authority as the Board may think necessary for the carrying out of the functions of the Authority.

Board of
Directors

6. - (1) The management of the Authority is hereby vested in a Board of Directors.

(2) The Board shall consist of-

- (a) a Chairman who shall be appointed by the President;
- (b) the Director-General; and
- (c) not less than five and not more than nine other members to be appointed by the President.

(3) The members shall elect a vice-chairman of the Board from amongst their number.

(4) The Board may co-opt any person or persons to serve on the Board and such co-opted person or persons may take part in the deliberations of the Board but shall not vote.

(5) A member of the Board appointed under sub-paragraph (2) shall, unless he sooner dies or resigns, hold office at the pleasure of the President.

(6) If any member is, without the permission of the Board, absent for more than three consecutive meetings of the Board, he shall, unless the President otherwise directs, cease to be a member of the Board.

(7) A member of the Board may at any time resign by giving notice in writing to the President and from the date specified in the Notice or if no date is specified from the date of the receipt by the President of the notice, he shall cease to be a member.

(8) For the purposes of this Order "member of the Board" includes the Chairman.

Meetings

7. - (1) The Board shall meet at least once in every three months and may meet at such times as the Chairman may deem necessary or expedient for the transaction of the business of the Board.

(2) All meetings of the Board shall be convened by the Chairman or, in his absence from the United Republic, or incapacity through illness or other cause, the vice-chairman who shall appoint the time, place and date for such meeting.

(3) The Chairman, or, in his absence the vice-chairman shall preside at any meeting of the Board. In the absence of both the Chairman and the vice-chairman from any meeting the members present at the meeting shall elect one of their number to be Chairman for that meeting.

Capital Development Authority (Establishment)

G.N. No.230 (cont'd)

8. - (1) A simple majority of the total number of the members of the Board shall constitute a quorum for any meeting of the Board. Quorum and procedure at meetings

(2) All acts, matters and things authorized to be done by the Board shall be decided by resolution at a meeting of the Board at which a quorum is present.

(3) A decision of the majority of the members present and voting at a meeting of the Board at which a quorum is present shall be deemed to be a decision of the Board.

(4) Every member of the Board shall have one vote and in the event of an equality of votes the Chairman of the meeting shall have a second or casting vote in addition to his deliberative vote.

9. Minutes in the proper form of each meeting of the Board shall be kept and such minutes shall be submitted to the Board at its next meeting and, if confirmed by the meeting, shall be signed by the Chairman of the meeting. Minutes to be kept

10. - (1) The seal of the Authority shall be affixed by the Director-General, the vice-chairman, or such officer of the Authority as the Board may appoint in that behalf and shall be witnessed by the person affixing the same or any other member of the Board or officer of the Authority as the Board may nominate in that behalf. Execution of documents

(2) All contracts, guarantees, bonds, securities, mortgages, charges, bills of exchange, promissory notes, bank drafts, letters of credit, securities and other instruments whatsoever to which the Authority is a party shall be executed on behalf of the Authority -

(a) by the Chairman or

(b) by the Director-General and such other person or persons as may be authorized by the Board in that behalf; Provided that as respects any instrument specified in this sub-paragraph, the Chairman may in writing delegate his functions under this sub-paragraph to any officer of the Authority, but no such delegation shall prevent the Chairman from exercising the function himself.

11. Subject to the provisions of paragraph 8 relating to quorum, the Board may act notwithstanding any vacancy in the membership thereof, and no act or proceeding of the Board shall be invalid by reason only of some defect in the appointment of a member or a person who purports to be a member. Vacancies not to invalidate proceedings

12. - (1) The funds of the Authority shall consist of -

(a) such sums of money as may be provided by Parliament for the purposes of the Authority;

Funds of the Authority

(b) such sums of money as the Board may, subject to sub-paragraph (2) raise from time to time by way of loan or loans;

(c) such sums of money as may become vested in the Authority in any manner whatsoever.

Ministers Assignment (Ministerial Responsibilities)

G.N. No 230 (cont'd)

(2) The Authority may from time to time borrow such sums of money as it may require to meet any of its obligations and for the purposes of its business, and may secure such loans in such manner as the Board may, with the approval of the President authorize.

Salaries
etc. to be
paid out
of Auth-
ority's
funds

13. - (1) The Authority shall apply its funds for the following purposes -

- (a) the payment of all the salaries, fees, and other allowances whatsoever duly payable to the members of the Board and officers or servants of the Authority;
- (b) the payment of the expenses, and other charges duly incurred by the Authority or for which the Authority may become duly liable in the course of the performance of its functions;
- (c) such other purposes as the Board may approve.

(2) The Board may invest all or any portion of any moneys which are for the time being surplus to its requirements in such securities as may be approved by the President.

Reports

14. The Director-General shall prepare and make a report of the activities of the Authority and submit it to the President twice every year and so that the period intervening between any one and the next such person shall not exceed seven months.

Proceedings

15. Subject to the provisions of this Order, the Board shall regulate its own procedure.

The State House
Dar es Salaam
5th October, 1973

J.K. NYERERE,
President